



REPORT
of the
COMMISSION OF INQUIRY
on
THE INCIDENTS RELATING
to the
ASSAM-NAGALAND BORDER CONFLICT

APRIL—JUNE 1985

1987

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ASSAM-NAGALAND BORDER CONFLICT



By
R. K. SHASTRI
SOLE MEMBER

(Appointed under the Commissions of Inquiry Act, 1952, (60 of 1952) by the Government of India, Ministry of Home Affairs. Vide Notification No. S.O. 615(E) dated the 21st August, 1985 read with Notification No. 11012/187/85-NE IV dated the 11th November, 1985).

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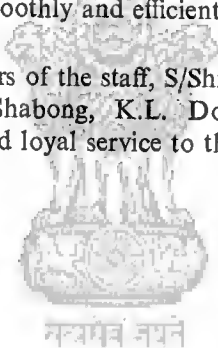
2. The Commission would like to convey its thanks to Counsel appearing for Nagaland, S/Shri J.P. Bhattacharjee, Advocate General, Nagaland, Dipankar Ghosh, Jayanta Mitra and others; and Counsel appearing for Assam, S/Shri A.K. Bhattacharyya, Anup Kumar Das, Pranabananda Pathak for their co-operation and assistance at every stage of the inquiry.

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4. Shri S.L. Chopra, Secretary to the Commission, gave valuable assistance in collecting and collating the voluminous mass of documents and files, in preparing charts and tabulations, checking references, etc. The Commission would like to place on record its appreciation of the excellent work done by him.

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CHAPTER I

INTRODUCTION

1.1 There was a serious clash between the armed police forces of the States of Assam and Nagaland at Merapani, a village towards the south of Golaghat in Jorhat district of Assam. This armed conflict was one of the most serious incidents that had taken place on the borders of the two States and fighting between the two forces went on for three days from the 4th June to the 6th June, 1985. Heavy losses were suffered by Assam with a large number of police personnel and civilians being killed and injured. Over 7,000 families were rendered homeless and a large number of schools, shops, bazar sheds etc. were destroyed. Hundreds of cattle were lost. The State Government had to seek financial assistance from the Government of India for rehabilitation and resettlement of the uprooted families.

1.2 Taking note of the senseless killing of the people and the large scale destruction of property during the conflict, the Central Government, after consultation with the two State Governments, appointed a Commission of Inquiry to inquire into this incident and suggest short-term and long-term measures to prevent recurrence of such incidents and make such other recommendations as it might deem fit.

1.3 The full text of the Notification issued under section 3 of the Commissions of Inquiry Act, 1952, by the Government of India in the Ministry of Home Affairs on the 21st of August, 1985 is given below :—

Appointment of the Commission

MINISTRY OF HOME AFFAIRS

New Delhi, the 21st August, 1985

NOTIFICATION

S.O. 615(E).—Whereas the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely, the incidents relating to the Assam-Nagaland border conflict during April to June, 1985;

Now, therefore, in exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of Shri B. C. Mathur, as sole member.

2. The Commission shall make an inquiry with respect to the following matters :—

- (i) the sequence of events leading to and all the facts relating to the said conflict in the Merapani area on the Assam-Nagaland border;

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- (ii) whether the conflict and the resultant loss of human life and damage to property could have been averted;
- (iii) the role of the authorities in both the States in mobilizing and deploying armed police forces including village guards of Nagaland;
- (iv) whether there were any lapses or dereliction of duty on the part of the officials and uniformed forces of the two State Governments;
- (v) the deficiencies in the police set-up of both the States and suggestions for revamping the same.

3. The Commission may also recommend short-term and long-term measures to prevent recurrence of such incidents and in that context make such other recommendations as it may deem fit.

4. The Commission shall submit its report to the Central Government as soon as may be, but not later than six months from the date of publication of this notification in the Official Gazette.

5. The Commission, if it deems fit, make an interim report to the Central Government before the expiry of the said period on any of the matters mentioned in paragraphs 2 and 3.

6. The headquarters of the Commission shall be at Shillong, Meghalaya.

7. The Central Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952), should be made applicable to the said Commission and the Central Government hereby directs under sub-section (1) of the said section 5 that all the provisions aforesaid shall apply to the said Commission.

[No. 11012/95/85-NE.IV]

S. S. SHARMA, Officer on Special Duty

Shri B. C. Mathur, a former Secretary to the Government of India took over as the Sole Member of the Commission on 1st September, 1985, and relinquished charge on his appointment as Vice-Chairman of the Central Administrative Tribunal on 29th October, 1985.

The Government of India then appointed Shri R. K. Shastri, earlier Secretary to the Government

of India, to succeed Shri Mathur *vide* Notification No. 11012/187/85-NE.IV, dated 11th November, 1985. Shri Shastri took over the assignment with effect from 13th November, 1985, and continued till the end. The Government of India also appointed Shri S. L. Chopra who was earlier in the Ministry of Tourism & Civil Aviation as Secretary to the Commission.

Through the good offices of the Ministry of Home Affairs, the North Eastern Council Secretariat, Shillong, made available to the Commission the services of Shri T. Roy, Deputy Director (Administration) in the Council to organise setting up of the Commission's office and as a result of his efforts, accommodation consisting of two rooms was placed at the disposal of the Commission in the North Eastern Council Secretariat in the Arunachal Pradesh building. Meanwhile, the Sole Member Shri R. K. Shastri and the Secretary Shri S. L. Chopra had in the third week of November taken over at Shillong and again through the good offices of the Ministry of Home Affairs, the Arunachal Pradesh Administration agreed to allot five rooms in their Secretariat building for use of the Commission. The Commission office then speedily organised the recruitment of staff, furnishing of rooms and purchase of necessary items for the running of its office.

Issue of Notification by the Commission

1.4. The immediate task before the Commission was to issue a notification in pursuance of sub-rule (2) of rule 5 of the Commissions of Inquiry (Central) Rules, 1972. Accordingly, the Commission issued notification No. SCI/85, dated 25th November, 1985, the text of which is reproduced below :—

No. SCI/85/1

SHASTRI COMMISSION OF INQUIRY

Arunachal Pradesh Secretariat,
Shillong, the 25th November, 1985.

NOTIFICATION

Whereas by Notification No. S. O. 615(E), dated the 21st August, 1985, read with Notification No. 11012/187/85-NE.IV, dated the 11th November, 1985, the Central Government, in the Ministry of Home Affairs, has appointed a Commission of Inquiry consisting of Shri R. K. Shastri for the purpose of making an inquiry into a definite matter of public importance, namely incidents relating to the Assam-Nagaland border conflict during April to June, 1985.

2. Now, therefore, in exercise of the powers conferred on it by and under the Commissions of Inquiry Act, 1952 and in pursuance of sub-rule (2) of rule 5 of the Commissions of Inquiry (Central) Rules, 1972, the Commission so appointed hereby issues this Notification inviting all persons acquainted with the

subject matter of the inquiry, to furnish to the Commission a statement relating to the following matters namely :—

- (i) the sequence of events leading to and all the facts relating to the said conflict in the Merapani area on the Assam-Nagaland border;
- (ii) whether the conflict and the resultant loss of human life and damage to property could have been averted;
- (iii) the role of the authorities in both the States in mobilizing and deploying armed police forces including village guards of Nagaland;
- (iv) whether there were any lapses or dereliction of duty on the part of the officials and uniformed forces of the two State Governments;
- (v) the deficiencies in the police set-up of both the States and suggestions for revamping the same.

3. Every statement furnished to the Commission should be in the form of an affidavit in respect of the facts set out in the statement.

4. Every person furnishing the affidavit shall also furnish to the Commission along with the affidavit a list of documents, if any, on which he proposes to rely in support of the contents of his affidavit and forward to the Commission wherever possible the original or true copies of such documents as may be in his possession or power and shall state the name and address of the person from whom the remaining documents may be obtained.

5. All affidavits made in response hereto shall be treated as confidential documents unless otherwise directed by the Commission.

6. The affidavit shall be sworn before a Magistrate of First Class or other authority legally empowered to administer oath.

7. If the affidavit is in a language other than English, it shall be accompanied by a translation thereof in English, duly authenticated by Counsel or a Magistrate of the First Class.

8. The Magistrate or the authority before whom the affidavit is sworn, shall make this endorsement thereon :—

"Sworn before me by the deponent who is identified to my satisfaction by.....r/o..... or is personally known to me. The affidavit has been read out in full to the deponent who has signed it after admitting it to be correct, this.....day of....., 19..... at....."

Signature of the Magistrate/
Authority.

9. Every affidavit shall be drawn up in the first person and divided into paragraphs to be numbered

consecutively, each material statement of fact being made the subject matter of a separate paragraph. The affidavit shall state the description, occupation, if any, and the place of abode of the deponent.

10. Towards the end, the affidavit shall be verified in the following manner :—

“Verified that the statements made in paragraphs of the above affidavit are true to my personal knowledge and those in paragraphs from information received from (disclose source) and believed to be true by me.”

If such information is derived from any document or record, the particulars and nature of such document and the person in control or custody thereof should be indicated. If any part of the statement in the affidavit is verified from information received, the source of such information should be disclosed. The deponent shall file along with his affidavit a list of documents on which he intends to rely. He shall also file a list of witnesses with their full particulars and addresses, whom he would like to examine in support of his statements in the affidavit. Against the name of each witness the deponent shall indicate briefly the fact or facts, which the witness is expected to prove in his examination, and why instead of oral examination, his examination on affidavit will not suffice.

11. Every affidavit filed shall be accompanied in five copies thereof.

12. If the deponent relies for the whole or any part of his statement in the affidavit on any document, the original document or a duly certified copy thereof shall be filed along with the affidavit. If the original of such a document is not in the possession or control of the deponent, he shall disclose the name of the person with his full particulars who is in custody thereof. In case the document is an official record, the Department or the officer in custody and control thereof shall be named.

13. After examination of all the statements that may be furnished in response to the notices issued under rule 5, the Commission may, if it considers necessary in the interest of justice, call upon any person filing an affidavit to give oral evidence and submit himself to cross-examination. In such a case the affidavit already filed by the person may be treated as part of his examination-in-chief.

14. The affidavits along with documents as indicated above shall be sent to the Secretary of the Commission at Arunachal Pradesh Secretariat, Shillong-793001, by registered post, acknowledgement due, so as to reach by the 6th of January, 1986, or personally handed over to the Secretary or some other officer authorised by the Commission in this behalf, and a receipt obtained, on or before 6th January, 1986.

By order of the Commission

Sd/-

(S. L. CHOPRA)

Secretary of the Commission.

Copies of the Notification were published in the following newspapers :—

- (i) The Times of India, New Delhi;
- (ii) The Statesman, Calcutta;
- (iii) The Assam Tribune, Guwahati;
- (iv) The Sentinel, Guwahati;
- (v) The Nagaland Times, Dimapur;
- (vi) The Uramail, Dimapur.

Copies of the notification were also sent to the Chief Secretaries of the Assam and Nagaland Governments as they were vitally concerned with the subject matter of the inquiry. They were requested to furnish to the Commission facts set out in the statement in the form of affidavit(s) with documents etc., if any, as prescribed in the notification so as to reach the Secretary to the Commission at the Arunachal Pradesh Secretariat on or before the date specified in the notification, viz., the 6th January, 1986.

Regulations of Procedure

1.5 Simultaneously, the Commission drew up its Regulations of Procedure as required under section 8 of the Commissions of Inquiry Act, 1952. Copies of the Regulations of Procedure were sent to the Chief Secretaries of Assam and Nagaland with a forwarding demi-official letter from the Secretary of the Commission requesting them to depute a representative to appear before the Commission on 12th December, 1985 at Shillong to present the views of their Governments, if any, in this matter.

The two State Governments had no comments to make in respect of the Regulations of Procedure. The Commission, therefore, finalised these Regulations after making some minor amendments which it considered necessary. A copy of these Regulations is at Appendix I.

Some of the salient features of the Regulations of Procedure are given below :—

- (i) After examination of all the affidavits that may be filed in response to notices issued under Rule 5, the Commission may, in the interest of justice, call upon any deponent to lead oral evidence and submit himself to cross-examination. In such event the affidavit already filed by the person may be treated as a part of his examination-in-chief. No party shall have the right to insist on oral examination of any deponent without the leave of the Commission.
- (ii) The Commission shall have the right to refuse to examine any witness if it is of the opinion that the evidence of the witness is irrelevant or unnecessary or if he has been cited for the purpose of delay or vexation.
- (iii) Technical rules of the Evidence Act, as such, shall not govern the recording and admissibility of evidence before the Commission. Fundamental principles of natural justice shall, however, be followed.

- (iv) In the event of oral evidence being recorded, cross-examination shall be allowed to all parties as provided in section 8C of the Act.
- (v) The Commission may, at its discretion, dispose of any issue of fact on affidavit without any oral evidence.
- (vi) When evidence is recorded, the Commission, after the completion of the recording of evidence will afford an opportunity of addressing arguments, but may restrict the duration of arguments to a specified period for each counsel.
- (vii) The Commission may permit the parties concerned to supplement oral arguments by written arguments.

Proceedings of the Commission

1.6 Representatives of the State Governments of Assam and Nagaland appeared on the 6th and 8th January, 1986, and requested the Commission for extension of time to file statements/affidavits etc. The Assam Government asked for an extension of one month on the ground that they were busy upto about the end of December, 1985 with the State Elections and had been, under the circumstances, unable to deal with the subject matter of the inquiry within the time given. The Government of Nagaland in asking for extension of two months said that they were to collect a lot of material from various people and officials working in remote areas and there were also the long Christmas holidays. The Commission after hearing the representatives of two States, allowed one month's time for the filing of statements/affidavits, etc. The next date of hearing was fixed as 12th February, 1986.

1.7 Statements/affidavits were filed by the two State Governments on the 7th February, 1986. At its hearing of the 12th February, 1986, the Commission ordered as follows :—

- (a) Counter-affidavits will be filed by the two sides in reply to the statements in the form of affidavits filed on the 7th February, 1986. As far as possible, these counter-affidavits will deal with points made para-wise in the affidavit filed by the other State. This would also cover documents which form part of the main affidavit.
- (b) The individual officers/persons who figure in the main affidavits will file their individual affidavits to answer statements made in the main affidavits concerning them along with anything else they might have to say on the subject.
- (c) Counter-affidavits and the individual affidavits will be filed before the Commission by the 14th March, 1986.
- (d) Lists of witnesses whom the two sides would like to call for oral evidence will also be submitted by the 14th March, 1986.

- (e) There will be a spot inspection by the Commission around the first week of April 1986. The exact programme, as finalised by the Commission, will be given to the two sides on the next day of hearing, namely, 14th March, 1986.

1.8 The Commission had noted at this point that the affidavits filed by the two State Governments did not adequately cover some of the terms of reference set for the Commission. In fact, the Nagaland affidavit did not cover the last term of reference at all. The two Governments were, therefore, required to suitably supplement their affidavits.

1.9 In pursuance of these orders of the Commission, at the Commission's hearing on 14th March, 1986, counter-affidavits were filed by the two sides and in addition, 14 affidavits of selected officials were filed on behalf of the State of Assam and 6 on behalf of the State of Nagaland. Learned Counsel of both the States requested for time to file additional affidavits of individual officers/persons as well as necessary documents in support of their case and prayed for at least one month's time to do so. Counsel for Assam also prayed that all the 14 officials whose affidavits had been filed should be called for oral evidence. The Commission directed that both the State Governments should file any other affidavits and documents considered relevant to the inquiry by the 7th April, 1986 and that there would be no further counter-affidavits. It was also ordered that all persons whose individual affidavits had been filed should be called for oral evidence. The affidavits filed by them would be considered as their examination-in-chief and they would be subjected to cross-examination on appearance before the Commission in terms of the Regulations of Procedure prescribed by the Commission. The Commission had again to point out that the affidavits of the two State Governments did not contain information on the last three terms of reference namely, role of the authorities in both the States in mobilizing and deploying armed police forces including Village Gaurds of Nagaland; whether there were any lapses or dereliction of duty on the part of the officials and uniformed forces of the two States; and deficiencies in the police set-up of the two States and suggestions for its revamping. For this purpose, the Commission directed as follows :—

- (a) The two States will submit by the 24th of March, 1986 a list of officers/officials who were in any manner dealing with or connected with the subject matter of the inquiry with reference to terms of reference No. (iii) and (iv). This list should give the names of these officers, their designations and ranks as at the relevant time, namely, March to June, 1985. It should also include the names of Chief Secretaries, Home Commissioners, Commissioners, Deputy Commissioners, Sub-Divisional Officers concerned, Border Magistrates concerned, Director General or Police/Inspector General of Police, Deputy Inspector General of Police (Range) and Superintendent of Police, Deputy Superintendent of Police

concerned, Officer-in-Charge, Merapani Police Station and Golaghat Police Station and any other relevant officers; the highest authority in command of the armed police, Commandants, Deputy Commandants etc., going down to the lowest formation which took part in the fighting between the police forces over the relevant period; Central Reserve Police Force Commanders and Central Reserve Police Force Command structure including Deputy Commandants deployed on either side; highest authority in command of Village Guards of Nagaland, the command structure of the organisation and various officers manning units relevant to the inquiry.

(b) The two States will submit :—

- (i) Minutes of all co-ordination committee meetings or Commissioner level meetings, or Deputy Commissioner level meetings from January, 1979 to June, 1985.
- (ii) All documents relevant for proper appreciation of terms of reference No. (iii) & (iv)—role of the authorities in both the States in mobilizing and deploying armed police forces including Village Guards of Nagaland; whether there were any lapses or dereliction of duties on the part of the officials and uniformed forces of the two State Governments. These documents will include files in the Home Department of the two States dealing with these matters as also in the offices of Commissioners, Deputy Commissioners, Sub-Divisional Officers, Deputy Inspector General of Police, Inspector General of Police concerned, Commandants concerned, Superintendent of Police etc., minutes of meeting held in this connection at various levels over the period April—June, 1985; all communications, letters, wireless messages, telex messages etc., exchanged within Departments or inter-departmental or inter-State. These documents will be accompanied by an affidavit to say that all documents relevant have been filed before the Commission. These documents will be filed with the Commission on the next date of hearing on 7th April, 1986.

With regard to term of reference No. (v), deficiencies in the police set up and suggestions for its revamping, the two State Governments should file a detailed note by the Home Secretaries/Directors General of Police/Inspectors General of Police giving the set up of the police forces including the armed police in the two States—the organisational structure, recruitment methods

and policy, training, welfare, housing, personnel management in general, postings and so on. Areas where in the opinion of the Home Secretaries/Directors General of Police/Inspectors General of Police there are gaps, deficiencies, limitations, weaknesses should be highlighted and suggestions for improvement made.

1.10 Lists of witnesses to be called for oral evidence which were required to be submitted by the 14th March, 1986 were actually filed on the 24th March, 1986.

1.11 At the Commission's hearing of 7th April, 1986, a further batch of 33 individual affidavits by non-officials was filed by Assam and 17 including both officials as well as non-officials by Nagaland. With regard to the latter, it was ordered that the first 5 officers in this batch of 17 would be called for oral evidence. The remaining 12 affidavits were taken on record as also affidavits of the 33 non-officials on behalf of Assam. The Commission ordered that at that stage there was no need to call for oral evidence with regard to these affidavits. Memorandum of the site inspection on 3-4-1986 drawn up by the Commission was taken on record.

1.12 A revised list of witnesses to be called for oral evidence was drawn up and the sequence of their presentation decided at the Commission's hearing held on 18-4-1986.

1.13 The Commission on its part felt that in addition to the witnesses cited by the two State Governments, it would be useful to have the testimony of some other officers who were in some manner or the other connected with the subject matter of the inquiry. Accordingly, S/Shri I. Longkumer, Chief Secretary, Nagaland; M. R. Choudhury, Inspector General (Training & Armed Police), Assam; K. K. Baruah, Secretary, Forest, Assam; S. R. Arya, Joint Secretary, Ministry of Home Affairs, Government of India; J. N. Mathur, Commandant, 48 Battalion Central Reserve Police Force and Chandrabhan, Deputy Commandant, 48 Battalion Central Reserve Police Force, were summoned for appearance as Commission witnesses. At its hearings from the 24th to 27th June, 1986, the Commission also accepted the request of learned Counsel for Nagaland for the production of Officer-in-Charge Police Station, Bhandari, Shri Z. Lõtha to tender oral evidence before the Commission.

1.14 The Commission held 31 open hearings stretching over the period April to August, 1986 during which oral evidence was recorded. In all, 29 witnesses were examined. Eleven on behalf of Assam and twelve on behalf of Nagaland, six appeared as Commission's witnesses. The list of witnesses, their names, designations and dates of their appearance, etc., is placed at—Appendix II.

1.15 The entire process of oral examination was concluded on the 21st August, 1986. On submission made by Counsel for Nagaland and Assam, 8 week's

time was allowed to both the sides to advance arguments. The process of hearing arguments started on 20th October, 1986 and was completed on 10th of November, 1986. Written arguments from both the States were permitted and were filed by the 20th November, 1986.

1.16 The statements of 29 witnesses run into 321 pages. Eleven documents were exhibited by Assam (Exhibits—A 1 to A 11); Sixteen by Nagaland (Exhibits—N 1 to N 16); and 46 as Commission Exhibits (Commission Exhibits—I to XLVI). Voluminous documents consisting of affidavits, counter-affidavits, etc., run into 6 volumes for Nagaland and 12 volumes for Assam. In addition, there were a large number of files from the offices of Sub-Divisional Officers, Deputy Commissioners, Commissioners, Directors General of Police, Inspectors General of Police, Home Department etc.—Appendix III.

1.17 The Commission also undertook a site inspection of the area of the conflict namely, Merapani on 3-4-1986. The Commission was accompanied by representatives of both the States of Assam and Nagaland and their Counsel. The Secretary to the Commission as also Legal Counsel of the Commission were present during the spot inspection.

Objections as to Procedure

1.18 No objections were raised by either side at any time during the course of hearing as to the procedure adopted by the Commission. In arguments, however, the learned Counsel for Nagaland referred to certain orders passed by the Commission at its hearing on 14th March, 1986. He said that in terms of these orders it was no longer possible for the Commission to take into account affidavits of persons who had not actually come and tendered oral evidence before the Commission. He particularly referred to the four officials of Assam, Shri Tularam Das, Sub-Inspector of Police, formerly in-charge of the Merapani Police Station; Shri Digen Sharma, Sub-Inspector of police and Second Officer-in-Charge, Merapani Police Station; Shri Mukund Baruah, Assam Battalion Sub-Inspector, Platoon Commander in 3rd Assam Police Battalion; Shri Prafulla Bora, Constable No. 260 of 3rd Assam Police Battalion who were not produced for oral evidence on behalf of the State of Assam although their names appeared in the first batch of 14 officials whose affidavits had been filed by the State of Assam. The statements of these persons in their affidavits pertaining to the incidents of 20th April and 22nd April, 1985 must according to the Counsel for Nagaland be excluded altogether from consideration.

1.19 In support of this contention, learned Counsel referred to the order dated 14th March, 1986 passed by the Commission as under :—

“Anything the two States have to say should now come through oral evidence as considered necessary. All persons whose indi-

vidual affidavits have been filed will be called for oral evidence.”

1.20 Fourteen individual affidavits had been filed by the State of Assam and Six by the State of Nagaland. This order of the Commission required that all these people should be called for oral evidence. It was incumbent on the part of the State of Assam, therefore, to call all fourteen officials so that opportunity could be provided to the Nagaland side for cross-examination, and without such cross-examination their affidavits could not be treated as evidence. Counsel referred to Regulations 19, 23, 25, 27, 29, 30 & 31 of the Regulations of Procedure framed by the Commission and said that this would clearly go to show that once the Commission decides to record oral evidence, evidence before the Commission must necessarily come through oral evidence only. Under the Commissions of Inquiry Act and the Rules made thereunder, it was not permissible to decide any issue of fact partly on oral evidence (which would include affidavits by the witnesses as their examination-in-chief) and partly affidavits of persons not called as witnesses at all. Such a course, the Counsel argued, would infringe the fundamental principles of natural justice required to be followed by the Commission as per Regulation 25. Counsel cited rulings laid down by the Hon'ble Supreme Court reported in AIR 1957, SC 882—“that opportunity of cross-examining a witness examined by any party is one of the rules of natural justice required to be followed”. He, therefore, prayed that the Commission should decide all issues of facts on the basis of oral evidence recorded and documents exhibited before the Commission.

1.21 On the other hand, learned Counsel for Assam argued that the statement made by the learned Counsel for Nagaland had no force at all in view of the specific provisions of the Commissions of Inquiry Act, the Rules framed thereunder and Regulations of Procedure made by the Commission. He contended that the Act empowered the Commission to decide all issues in the proceeding on affidavits of witnesses. The parties had no right to produce any witness for evidence. It was not an adversary proceeding. He further stated that with the consent of the two States before the Commission, the Commission had ordered the calling of those witnesses for oral evidence whose names were mentioned in the order of 18th April, 1986. If Nagaland wanted to cross-examine any person from the Assam side it should have made a prayer to the Commission to that effect. In absence of such a prayer, Nagaland was not entitled to make any grievance in this respect under the law. In support of his contention, he relied upon two Supreme Court decisions reported in AIR 1958, SC 538, para 8, page 546 Ramkrishna Dalmia and other vs. Justice Tendulkar and others and AIR 1967, SC 122, para 20, page 131 State of J & K vs. Bakshi Golam Mohammad.

1.22 The points put forth by the learned Counsel for Assam and Nagaland have been carefully examined. It is not possible to agree with the submissions made

by the counsel for Nagaland on the following grounds :-

- (a) The Commission is neither a civil nor a criminal court. There are no parties before the Commission. It is a fact finding inquiry. The report of the Commission has no force proprio vigore. In this particular inquiry, the two States namely, Assam and Nagaland were in fact required to assist the Commission in finding facts to arrive at the truth and give its findings in the nature of recommendations to the Government of India for such action as they may deem fit. The two States of Assam and Nagaland are not arraigned against each other as prosecution or accused or plaintiff or defendant as in criminal or civil proceedings. They are in a way two sides acquainted with the facts of the subject matter of the inquiry and are in the nature of amicus curiae.
- (b) The order of the Commission referred to by the learned Counsel for Nagaland was based on a question as to whether or not the two State Governments should be allowed to go on filing one after the other a number of counter-affidavits. The Commission had agreed with the view of the Counsel for the Commission that there should be no further counter-affidavits as this would be an endless exercise, and that further enquiry should be by way of calling people for oral evidence. This did not imply that anything which had come to the Commission in the form of affidavits was to be rejected or legally barred from consideration.
- (c) There is no blanket right of cross examination sanctioned by Regulation 29 made by the Commission. Cross-examination is to be allowed to parties as provided in Section 8-C of the Commissions of Inquiry Act. Therefore, it is only the appropriate Government (the appropriate Government in this case is the Central Government) and those covered by Section 8-B of the Act who have this right, not others whose evidence is recorded by the Commission. They can cross-examine only with the permission of the Commission.
- (d) Because of the nature of the inquiry, the Commission considered it desirable to call for oral evidence of all those persons whose affidavits had been filed as per order of 14th March, 1986. Subsequently, the Commission had with the consent of the two sides given the option to the two States to submit a list of witnesses to be examined by them i.e., those whose individual affidavits had been filed. This was done keeping in view the fact that the Commission did not want to examine all the 47 witnesses of Assam and 23 witnesses of Nagaland, whose affidavits had been filed before

the Commission as this would have led to interminable proceedings. The choice, therefore, was left to the two States to produce such witnesses as they considered necessary.

- (e) The claim that rules of natural justice had been impinged since State of Nagaland did not get an opportunity to cross-examine some witnesses of Assam is unjustified and unconvincing. In this respect, it is not possible to agree with the submission of the learned Counsel for Nagaland that the rulings reported in AIR 1967 SC page 122 in the case of Bakshi Golam Mohammad has no application to the present case. On the contrary, the observations of the Hon'ble Supreme Court are fully relevant and run counter to the arguments advanced by the Counsel for Nagaland. The Hon'ble Supreme Court had observed as follows :—

“...for these reasons, in our view, Section 4(C) of the Act does not confer a right on a party appearing before the Commission to require a witness giving evidence by an affidavit to be produced for his cross-examination. The Commission would, of course, permit cross-examination in a case where it thinks that necessary. The view that we take should not put any party in any difficulty. He can always file affidavit of his own denying the allegations made in the affidavits filed on behalf of the other party. If the evidence on both sides is tendered by affidavits, no one should be at any special disadvantage. We have also to remember that Section 9 of the Act gives the Commission power to regulate its own procedure subject to any Rules made under the Act. We find that the Rules provide that evidence may be given by affidavits and the Commission may after reading it, if it finds it necessary to do so, record the evidence of the deponents of the affidavits and also others...”

- (f) It is rather odd that this point has been raised by the learned Counsel for Nagaland at the stage of argument, when all hearings etc. have been virtually concluded. At no stage of the proceedings did he make any prayer to cross-examine any person from the Assam side whose affidavit had been filed but who had not been produced for cross-examination. He made no application to the Commission on the point that is now being made. Having failed to do so, he cannot at the argument stage take the plea that there was denial of opportunity to him for cross-examining some of the witnesses and therefore, contending that affidavits as such cannot be taken into account.

1.23 Therefore, the principles of natural justice have not been infringed and all opportunity as provided in Regulations of Procedure and the Act and Rules, has been given to both sides

1.24 As has been noted at paragraphs 1.8 and 1.9, the affidavits and other documents furnished by the two Governments did not contain adequate information to cover some of the terms of reference set for

the Commission. Actually, it had to be pointed out by the Commission that practically no material had been given with reference to the last term of reference, 'deficiencies in the police set-up of both the States and suggestions for revamping the same'. The Commission on its own has been unable to collect sufficient or satisfactory material so far in order to deal with this term of reference. The present Report, therefore, deals with the first four terms of reference.



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CHAPTER II

THE MERAPANI CONFLICT

2.1 The Merapani area in which this armed conflict took place lies in the Doyang reserved forest, one of the many reserved forests that stretch along the Assam-Nagaland border. While in terms of the constitutional boundary between the two States, the Merapani area falls within Assam in the district of Jorhat, there are long outstanding claims by Nagaland to territories presently forming part of Assam. There are also some agreements of an interim nature between the two States where the fact of certain areas being disputed as between them has been recognised. The Merapani sector is one such area. The constitutional position apart, therefore, under the working arrangements which subsist between the two States, Merapani would be an area where the claims of the two States still have to be gone into.

The Inner Line Permit Check Gate

2.2 Immediately south of the Merapani area is the Bhandari Sub-Division of district Wokha in Nagaland. Coming from the north from the Assam side one would go along the Golaghat-Wokha-Kohima road through Merapani village with its bazar, the Merapani area and then move towards the Nagaland foothills beyond which lie Bhandari, Wokha and Kohima. The Nagaland armed police maintained a company headquarters at the foothills near this road. Further north, near Merapani bazar there is a small Nagaland presence in the shape of a Check Gate maintained in this area for purposes of enforcing the Inner Line Regulations of Nagaland. The Bengal Eastern Frontier Regulations of 1873 enacted by the British India Government had sought to control the unrestricted movement of the plains people into the tribal areas in the hills and none could go beyond the inner line without a pass issued by the Deputy Commissioner. These restrictions are enforced through such check gates. Under an agreement between the two States in 1972, Nagaland were allowed to keep this check gate near the Merapani bazar on this road to exercise this function—and for the purpose to have it manned by 7 unarmed police personnel. Opposite this check gate is the Assam Merapani police station.

The April-June Events

2.3 The Nagaland Government in March 1985 started erection of a fencing around their check gate mentioned above towards the southern side i.e. towards the foothills. This had apparently been completed by the end of March or early April. Thereafter, on the 20th of April, the Nagaland authorities started erection of fencing on the northern side of the check gate. Although, as has been mentioned earlier, this check gate functioned under an agreement between the two States, there was considerable controversy

between them over a number of years as to any possible rights of Nagaland in the matter of repairs, reconstruction, construction of structures, etc. in this check gate. There were earlier incidents when the Nagaland authorities had attempted to erect some structure or the other or to put up fencing and this had been resisted by the Assam authorities. There had even been instances of the Assam authorities seizing the building materials. Matters had then been sorted out in discussion by the two sides.

Fencing at the Check Gate

2.4 On the 20th April, the Assam authorities seized the fencing material which was being used for erection of fencing towards the north of the check gate. Thereupon the Nagaland armed police came to the Inner Line Permit check gate from its company headquarters near the foothills and in turn some Assam armed police also came to the Merapani police station. In the rather generally tense relations existing between the communities on the border, the Naga and Non-naga public also gathered on the spot. The situation was defused by officers of the two Governments when they met towards the evening.

Firing incident of 22nd April

2.5 On the 22nd of April, the Deputy Commissioner of Wokha in Nagaland along with some officers went into the Merapani Police Station. There was some unpleasantness and a shot was also fired by an Assam Police personnel which according to the Deputy Commissioner was aimed at him. A great deal of tension was generated and the public from both sides gathered in strength. Again, there were some discussions and consultations amongst the officers of the two States and the situation eased for the moment. However, strains and tensions always there in these border areas in some form or the other took a turn for the worse.

The May 1 Agreement

2.6 On the 1st of May there was an agreement between the two sides that the armed forces of both sides should be withdrawn. For one reason or the other, however, this was not done. Bitterness between the two sides continued to increase, each blaming the other for non-implementation of the withdrawal agreement. Meanwhile, in spite of the action taken by the Assam authorities on the 20th of April to seize fencing material, fencing towards the north of the Inner Line Permit check gate went on and was completed by about the third week of May. The Chief Secretary, Assam visited the Merapani area on the 13th of May.

The Assam Check gate

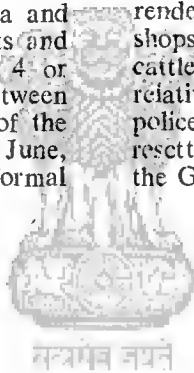
2.7 On the 26th of May there were heavy reinforcements of Assam armed police. A check gate variously described as the forest check gate or the police check gate was set up on the Golaghat-Wokha road beyond the Inner Line Permit Check Gate and the Merapani Police Station towards the south and in the direction of the foothills about a kilometre beyond the Inner Line Permit Check Gate. While according to Assam this check gate was necessary for controlling the movement of timber and administering the Forest Act and Regulations, according to Nagaland this police check gate with heavy police reinforcements had been set up to impose a blockade and obstructing the movement of Nagaland officers and the Naga people. And within two or three days Nagaland had reacted. The Nagaland armed police was substantially reinforced and by the 29th of May senior officers had been posted in the area.

The Armed Clash

2.8 By the 4th of June, the armed police of the two States had gathered in strength in this area and were positioned in a number of outposts, pickets and other positions facing each other. At about 4 or 4.30 PM on June 4th fighting broke out between them. It continued on the whole of the night of the 4th June, then during the entire day of the 5th June, the night of the 5th and on the 6th June. A formal

cease fire was declared on the evening of 6th June. During this period of three days, there was fierce fighting between the two sides and such weaponry as LMGs, 2" Mortars, Stenguns and the like was freely used. By the afternoon of the 5th June, some of the vital positions of the Assam Armed Police had fallen. By the afternoon of the 6th the Merapani Police Station as also an outpost further north beyond Merapani bazar, the two positions of the strength of Assam Police had also fallen. In the process the Merapani bazar was also overrun by the Nagaland forces.

2.9 Following the cease-fire on the evening of 6th June and under the agreement reached between the two Chief Ministers, neutral forces started moving in and had taken control about the 8th of June. The 12 Assam Rifles were in position till about the 19th of June when the 30th Battalion of Border Security Force moved in. The area is still under their control. The fighting resulted in heavy Assamese losses. Twenty eight Police personnel and thirteen civilians were killed and eighty-nine police personnel and thirteen civilians injured. Over 7,000 families were rendered homeless and a large number of schools, shops, bazar sheds etc. were destroyed. A number of cattle were lost. Casualties on the Nagaland side were relatively small and confined to the Nagaland armed police. Financial assistance for the rehabilitation and resettlement of the uprooted families was provided by the Government of India.



CHAPTER III

THE CASE OF THE STATE GOVERNMENTS

3.1 In pursuance of the notification issued by the Commission on 25th November, 1985 under Sub-Rule (2) of Rule 5 of the Commissions of Inquiry (Central) Rules, 1972, the State Governments of Assam and Nagaland submitted their Memoranda of Statement supported by affidavits stating their respective cases in regard to the Terms of Reference indicated in the notification issued by the Government of India in August, 1985. The two State Governments also submitted counter-affidavits as well as individual affidavits in support of their averments made in the statements/affidavits filed by them.

3.2 In this Chapter, the respective cases of the two State Governments as put forth by them before the Commission in the various documents will be dealt with.

3.3 It is an acknowledged and admitted case of both the States that the root cause of the armed conflict is the unresolved boundary dispute between the two States.

The Assam Case

3.4 Assam's case is that the border problem with Nagaland is due to the unjustified and illegal claims of the Nagaland Government on about 5,000 sq. miles of valuable land of Assam. Their claims include the whole of the North Cachar Hills district, more than half of the Karbi Anglong district and a small part of Nowgong district—and a large number of reserved forests in Jorhat and Sibsagar districts. The claim is based on the contention that these areas were traditionally Naga areas and were included in the Naga Hills districts by the British for 30 years before they were transferred to Assam for political and administrative considerations. The Assam Government refuted these claims of Nagaland as illegal and unconstitutional and historically incorrect. They have tried to trace the history of Nagaland to prove their point. In this respect, they have referred to the historical process from the pre-British days till the independence of the country and the creation of the State of Nagaland.

Historical Background

3.5 According to the Assam Government, the territories now included in the State of Nagaland have all along been part of Assam prior to its attainment of Statehood in 1963. During the pre-British days, the Kachari Kings ruled Assam with their capital at Dima-pur. The eastern boundary of their kingdom extended right upto the present Naga Hills and included various parts of the Naga Hills to the east of the Dhansiri

river. The Kachari kings were defeated by the Ahoms who ruled over a large portion of the territory on the eastern side and the whole of Kamrup, Darang, Lakhimpur and Sibsagar, a portion of Jaintia Hills and the whole of Mikir Hills. The Ahom Kings also extended their control on the south-eastern side effectively in areas right into the upper reaches of the Naga Hills. The Ahoms allowed the Nagas to come down to the plains only through controlled routes called 'Naga bats'. They did not interfere in their internal administration and considered them as their friendly allies. They collected taxes from the Nagas in the form of slaves, elephant tusks, woven clothing etc., from time to time. They also made grants of lands to the Naga Chiefs within the Ahom territory in a manner similar to the Assamese nobels.

3.6 In the early part of the nineteenth century, the Burmese invaded Assam and completely crushed the Ahoms. Later, by the Treaty of Yandabu in 1826, the Burmese Government handed over political and administrative control over the entire area comprising of the Ahom kingdom to the British Government.

3.7 The name 'Naga' was not known in any of the dialects of the tribes now composed of 'Nagas'. They were actually composed of a large number of clans hostile to each other inhabiting the mountain tops. They occasionally came down to the plains mainly for trade and plunder. No specific areas known as Naga territory can be traced till the late of nineteenth century.

British Expeditions into Naga areas

3.8 The British undertook several army expeditions into the Naga tribal areas to bring them under their administrative control during the middle of the nineteenth century. In order to evolve a viable administrative unit of the Angami and Kachari Nagas, the British rulers created a Naga Hills District by issuing a notification on 15th November, 1866. This District comprised of some areas of Nowgong district lying to the east of the Dhansiri river and the Naga Hills occupied by the Angami and Kachari Nagas.

3.9 By another Notification dated 16th December, 1867, the area of the Naga Hills District was increased by including a portion of Reangma and Mikir Hills and a small portion of the present Naga Hills and all portions of Nowgong district. This new district comprised of, to a small extent, Angami and Kachari Nagas living in the hills while the major portion of the territory was composed of fully administered areas of

Newgong district inhabited by non-Nagas. Thus, the Naga Hills District first came into being in the history of British administration of Assam.

3.10 In December, 1875, another Notification was issued by the then British rulers superseding the 1867 Notification. The boundary of the Naga Hills District was extended to some additional tracts from the districts of Cachar and Nowgong. This Notification, however, left the eastern boundary of the Naga Hills district undefined.

3.11 In 1882, four Lotha villages lying eastward of the Naga Hills District were included in the areas specified in the Notification of 1875. They also constituted the following reserved forests in the Sibsagar district of Assam :

1. Nambor—1872
2. Abhoypur—1881
3. Desoi reserved forests—1883
4. Diphu in 1887
5. Rengma—1887
6. Doyang—1888.

3.12 Although during the period when the jurisdiction of the Naga Hills District was being extended north-eastwards to include more Naga occupied areas, the then Deputy Commissioner, Naga Hills, strongly recommended transfer of the western portions comprising the Mikir and Rengma Hills to Nowgong District. These areas were originally added to the Naga Hills District by transferring them from Nowgong District. However, the retransfer of the aforesaid areas to Nowgong District could take place only in 1898. Thus, the retransfer of Mikir and Rengma Hills areas and the valley between the Doyang river and the Dhansiri river was the logical culmination of a process of retransfer of non-Naga areas to the plains districts (Nowgong and Sibsagar) following the extension of jurisdiction of the Naga Hills District by addition of Lotha and Ao areas.

A new Sub-Division of Mokokechang was added to the Naga Hills District by a Notification dated 22-2-1890. The Inner Line of Sibsagar District was made to coincide with the northern boundary of the new Sub-Division which again delinked the Inner Line from the Revenue Survey boundary.

3.13 There were again two important changes made in the territorial adjustment of Assam by the British Administration after 1901 for its own convenience. The first which took place in 1913 was to carve out a portion of Dimapur mouza originally belonging to the Kachari Kingdom and administered till then as a part of Sibsagar District and transfer the same to the Naga Hills District mainly for the purpose of providing the local administration with the Dimapur rail head. By Notification No. 6253 R dated 18th November, 1913, this artificial enclave was carved out and transferred to the Naga Hills District in utter disregard of strong public resentment and objections. This was done by the imperial rulers purely

with a view to meet their own administrative requirements without caring for public sentiment and convenience.

3.14 On the completion of this long process of boundary readjustment, a consolidated notification namely, Notification No. 3102-R dated 25th November, 1925 was issued by the British Government in supersession of all previous notifications. This Notification had fully described the boundaries of the Naga Hills District on the North, South, East and West as they emerged after the various changes that had occurred since the formation of the Naga Hills District with a view to remove any possible scope for doubt and confusion.

3.15 The Naga Hills District had originally been formed with pre-dominantly non-Naga areas of Nowgong District. It had slowly absorbed the Lotha and Ao areas along with the plains portions of Sibsagar District upto the revenue Survey boundary. Thereafter, it had shed the Mikir Hills, Rengma Hills, the valley between the Dhansiri river and the Doyang river and the areas north of the foothills. Thus, 'Naga Hills', as it stands today, is composed of a homogenous group of areas occupied by the various Naga tribes and cannot claim any areas outside its boundary as morally, legally or constitutionally belonging to it now or having belonged to it at any stage in history. On the contrary, the portion of Dimapur Mouza transferred to the Naga Hills in 1913 is clearly a territory which belongs to Assam and had been unceremoniously given away to Naga Hills for providing an alleged rail head and control of the road from Dimapur to Kohima. Therefore, it is highly essential to consider these additions and subtractions not in piecemeal or isolation but in the overall context of the historical facts, political developments and administrative convenience that took place between the years ranging from 1866 to 1925 under the British regime.

Naga Hills Tuensang Area Act 1957

3.16 After the independence of India, Parliament enacted the Naga-Hills-Tuensang Areas Act in 1957 which provided for a new administrative unit in the State of Assam, comprising of tribal areas which were known as the Naga Hills District and Tuensang Frontier Division of the North-East Frontier Agency.

Statehood for Nagaland in 1963

3.17 Nagaland became the Sixteenth State under the Constitution of India on 1st December, 1963 by an Act of Parliament. The boundary of the new State comprised of territories which immediately before 1st December, 1963 were included in the Naga Hills-Tuensang Area and thereupon the said territories ceased to be part of Assam. In essence, the Nagaland boundary with Assam is thus entirely based on the Notification of 1925.

Emergence of the boundary problem

3.18 Soon after the creation of the State of Nagaland, the Nagaland Government began to lay claim

to some territories of Assam, particularly the reserved forests lying in the Sibsagar (now Jorhat) district and North Cachar district. After the cessation of hostilities between the underground Nagas and the Indian Army, a large number of underground Nagas came to settle with their families in the reserved forest areas encroaching on large tracts of Assam lands. These encroachments by the Naga elements were systematically supported by the Nagaland Government ostensibly with a view to meet the aspirations of the Naga people. According to the Assam Government, whenever proceedings were started against these encroachers, a hue and cry was raised by the Nagaland Government against the Assam action. Between 1964 and 1968, large scale encroachment in the reserved forest areas by the Nagas led to the straining of relations between the two State Governments. The Assam side says that Chief Minister, Assam had allowed these Naga encroachments to continue on humanitarian grounds on assurance by Chief Minister, Nagaland that there would be no further encroachments. However, the encroachments continued unabated.

3.19 A number of meetings were held in 1967 and 1968 between the two Chief Ministers and Chief Secretaries of Assam and Nagaland and it was decided that the Nagaland Government would take necessary steps to prevent further encroachment on reserved forests of Assam and that the Survey of India would undertake survey to demarcate the boundary between Assam and Nagaland. Following this decision, the Assam Government provided all facilities to the Survey party to survey and demarcate the area but the Nagaland Government showed lukewarm interest and encouraged Nagas to obstruct the work of survey in the reserved forests. Consequently, the survey party suspended its operations from March 1969. Thereafter, encroachment by the Nagaland Government inside Assam, particularly in the Doyang, Desoi Valley, Gelaki, Tiru Hills reserved forests including the eastern part of the boundary i.e. Auguriyan village, Sonari Mon road and Towkok Tea Estate continued to increase. The Nagaland armed police established ten armed police posts within the territory of Assam along the Assam-Nagaland border including the Central Reserve Police Force checkposts in the Towkok tea garden area between August 1969 and March 1970. These Nagaland Armed Police posts gave adequate support to the local Nagas to illegally occupy the land of the Assamese settlers by harassing them in various ways in carrying out their normal business and communication. The Assam Government maintains that the Nagaland Government was determined to achieve its illegal claims on the territories of Assam through systematic encroachments by use of force.

3.20 With the establishment of several Nagaland Armed Police posts and large scale encroachments including burning of reserved forest areas, the situation on the Assam-Nagaland border began to pose a great threat to law and order. The Assam Government approached the Government of India to assist them in the demarcation of the boundary between Assam and Nagaland by the Survey of India.

Appointment of Shri K. V. K. Sundaram to study the border problem

3.21 Meanwhile, the Central Government appointed Shri K. V. K. Sundaram, the then Chairman, Law Commission, to study the border problem between Assam and Nagaland and try to bring about an agreement of the people of the two States and to create faith and goodwill between them. This was done in 1971. After the inspection of the border areas, Shri Sundaram made certain suggestions for joint survey on the basis of the existing notifications.

Interim Agreements of 1972

3.22 On the suggestion of Shri K. V. K. Sundaram, with a view to maintain peace and tranquillity along the Assam-Nagaland border and without prejudice to the respective claims in regard to the location of the Assam-Nagaland boundary, pending the submission of the report, four interim agreements were entered into by the two State Governments. The first two agreements signed on 31-3-1972 related to the Gelaki reserved forest area and construction of a portion of the Amguri Tuli Road and the boundary from Teok river to the Desso river. The third agreement signed on 2-5-1972 related to the boundary from the Desso river to Gororjan stream and from Kakadanga river to Doyang river which included the Desso Valley and Doyang reserved forest and the tea gardens falling in the area. The fourth one signed on 23-5-1972 related to the Gororjan stream to the Kakadanga river which included the Kakadanga forest area. The following are the main points on which both the State Governments expressed their agreement :

- (a) To withdraw, within one week of the agreement, certain armed police posts.
- (b) Not to set up any armed police post within the said border areas to be determined by the Inspector Generals of Police of the two States and in case of Geleki reserved forests within a distance of 3 kilometre of the periphery thereof.
- (c) The Assam Government agreed as a purely provisional and temporary measure to the Nagaland Government continuing its civil police check gates at (a) the eighth mile on the Amguri-Tuli road (b) near the Animal Husbandry Colony on the Golaghat-Wokha road (c) at Tzutapela (near New Sonowal) on the Mariani-Mokokchung road and (d) at Tijit south of Namsoi Nadi on the Sonari-Mon road to be manned by not more than 7 (seven) police personnel for the purpose of enforcing the Nagaland Security Regulations, 1962 to control the access of unauthorised persons into Nagaland.
- (d) The Nagaland Government agreed that it will not prevent or restrict the entry at these check gates of Assam Government officials or other persons authorised by Assam Government in carrying out their normal functions and duties.

- (e) The Assam Government agreed that the reserved forests of Geleki, Abhoypur, Tiru Hills, Desso, Desso valley, Doyang should continue to be reserved forests and maintained as such. No settlements of villagers and no encroachments will be allowed. In dealing with encroachments the Assam Government will enforce a uniform policy irrespective of the area or State to which the encroachers belong.
- (f) The Nagaland Government agreed not to interfere with or obstruct in any way the forest officials and contractors of the Assam Government in the performance of their functions in all these reserved forests including the control over, normal maintenance and working of these reserved forests under lease agreements or contracts already entered into by the forest department of Assam Government. The Assam Government agreed to furnish to the Nagaland Government within Ten days of these agreements a full and complete list of leases and contracts already entered into in respect of the said reserved forests.
- (g) The Nagaland Government agreed not to undertake any survey or construction of road or other structures in these reserved forests except repairing, widening, strengthening and realigning of the Ainguri-Tuli road within the limits of the Geleki Reserved forest.
- (h) The Nagaland Government agreed not to interfere with or obstruct, in anyway, the working of the Tea Gardens on the border between the two States by the two companies under their respective existing grants and leases.
- (i) The Assam Government agreed that such areas near the border in the Kakadonga forest as were previously under cultivation by the villagers of Yumpang, Champang, Old Tsori and New Tsori will be allowed to remain under their cultivation during the period of this agreement.
- (j) The Assam Government agreed that all the plots of the Kakadonga forest which have not already been allotted will not be allotted during the continuance of this agreement.

3.23 According to Assam, despite the signing of these Interim Agreements, the situation along the Assam-Nagaland border remained far from satisfactory. The Nagaland Government illegally occupied more forest land for their cooperative farm including the Velluguri Seed Farm which was established in 1971. The area of this farm was increased from 100 acres to 300 acres by illegally encroaching upon the land of Assam Government.

3.24 A number of meetings were held at the level of the Commissioners or Deputy Commissioners of

the two States after the Interim Agreements were signed. These meetings were in the nature of review meetings to ensure the compliance of the terms of the agreements. Local incidents of encroachments and other miscellaneous problems were also discussed. But in spite of such high level meetings, the Nagaland Government continued to violate the provisions of the Interim Agreements by encroachments and forcible occupation of areas claimed by the State of Nagaland. As a result, the Assam-Nagaland border continued to depict a very uncanny picture including illegal activities and criminal intimidation indulged in and meted out to the Assam people and to the Assam Government officers by the Naga villagers and agents of the Nagaland Government.

3.25 The Naga encroachers established 21 villages in the Diphu Reserve Forest, 17 in the Nambor South Reserve Forest and 13 in Rengma Reserve Forest by the end of May, 1978. The Nagaland Sugar Mill at Dimapur encouraged the Naga encroachers to convert nearly half of Diphu Reserve Forest into sugarcane feeding centre. The Sugar Mill authorities directly allotted land to the Nepalese, financed them to fell and burn the forests to raise sugarcane cultivation and to construct feeder roads including one motorable road from Havishe basti to Sitori basti and Zekeli basti by using bulldozers.

3.26 By November-December 1978, the situation along the Assam-Nagaland border had deteriorated to a considerable extent. The Assam Government strengthened security measures to protect the lives and properties of the inhabitants of Diphu, Nambor South and Rengma Reserve Forest areas. The Assam Government also informed the Government of India about the unfriendly attitude of the Nagaland Government and serious tension mounting in the border areas.

Agreements of 1979 between the two Chief Ministers

3.27 The Chief Ministers of Assam and Nagaland met on 2nd January, 1979 at Kohima, where it was agreed to settle the border issues by bilateral discussions. It was also agreed to maintain *status quo* and observe the spirit of Interim Agreements of 1972 all along the border with a view to maintain peace, harmony and tranquillity pending final solution of the problem. Both the Chief Ministers made a joint request to the Prime Minister of India to make copies of the report submitted by Shri Sundaram available to them as soon as possible to facilitate bilateral discussions.

3.28 The spirit of goodwill generated by the agreement between the two Chief Ministers was, however, disturbed by a serious incident on 5th January, 1979, when 54 Assamese villagers of Diphu, Rengma and Nambor South Reserve Forest were killed and 39 persons were seriously injured. Thereafter, on 28-1-79, the Chief Ministers of Assam and Nagaland again met under the auspices of the Governor of Assam at Shillong to review the situation. Both the Chief Ministers agreed to intensify and mobilise their efforts to restore normalcy in the affected areas and apprehend the miscreants responsible for the brutal atrocities.

3.29 Following the 5th January, 1979 incident, the then Prime Minister of India wrote a Demi Official letter dated 25th January, 1979 addressed to the Chief Minister of Nagaland drawing his attention to the serious situation arising out of the border issue. The Prime Minister specifically underscored the following points :

- (a) Any attempt on the part of the people living on the Nagaland side of the boundary to take the law into their own hands has to be curbed firmly.
- (b) It would also follow that the State within whose constitutional boundary such areas fall has a constitutional and moral obligation to exercise its lawful jurisdiction through its law and order machinery.
- (c) So long as any area in respect of which Nagaland may have any claim forms constitutionally part of another State, the people living in such areas, irrespective of ethnic or other affiliations should be made to realise that they have an obligation to obey all laws in force in that State and assist the law and order authorities in maintaining peace and order.
- (d) In case there is any difficulty in ascertaining where exactly the boundary lies between the two States, Nagaland may seek assistance of the Survey of India to secure a physical demarcation of the boundaries and meanwhile, existing practices in regard to such boundaries should be scrupulously honoured.
- (e) The law and order authorities of the adjoining areas should frequently meet to ensure that all efforts are made to resolve any problem that may arise from time to time.

3.30 The situation on the border continued to cause serious concern despite the views expressed by the then Prime Minister of India. As a result, the Union Home Minister held a meeting in Delhi on 11th April, 1979, with the Governor of Assam and the Chief Ministers of Assam and Nagaland. The following decisions were taken in this meeting :—

- (i) An expeditious permanent solution to the differences regarding the border between Assam and Nagaland should be found. Shri K.V.K. Sundaram's report should be made available to the Governments of Assam and Nagaland. Those specific aspects in his study with which the two State Governments do not agree, will be listed out by them and the reasons for such disagreement would also be set out. These comments of the two States would be made available to one another. Thereafter, within the next 2/3 weeks, the two Chief Ministers will meet to resolve these differences whenever it will be possible and make earnest attempt to arrive at mutually acceptable solution.

- (ii) The Home Minister also informed the Chief Ministers that a Senior Officer from the Centre would be deputed to this area to remain in touch with the local officers of the two State Governments and help in sorting out any problem that may arise. This was agreed to by the Chief Ministers.

3.31 In pursuance of the decisions arrived at in New Delhi on 11th April, 1979, as many as 20 Commissioners' level Coordination Committee meetings were held between the two States in order to achieve fruitful results towards restoration of permanent peace and tranquillity by mutual understanding and meaningful dialogue.

3.32 The Assam side further asserted that since both the State Governments had agreed to the boundary issues being examined by Shri K. V. K. Sundaram, they (Assam) were prepared to accept any specific suggestions for modifications of the boundary suggested by Shri Sundaram for final solution of the problem, as a whole, and not by parts and, accordingly, Government of India was informed to this effect. But, unfortunately, Government of Nagaland conveyed to the Government of India, that the report submitted by Shri K.V.K. Sundaram was not acceptable to Nagaland. Though the Government of Assam emphasised the necessity for the acceptance of Shri Sundaram's report as a basis for future negotiations, this could not materialise as the Nagaland Government declined to accept the proposal.

3.33 Assam has strongly contended that despite the Interim Agreements, the goodwill generated through meetings and discussions at high level, there was no perceptible improvement in the border situation. Nagaland continued its activity of forcible occupation of land by the Naga people by encroaching upon vast areas of Assam. Assam has given a list of border incidents since 1972 contained in their memorandum (A-I). This list reveals that a number of incidents of murder, arson, assault, intimidation, kidnapping, etc. took place and the victims were the Assamese. This situation continued right upto the end of 1984.

3.34 Assam further alleges that from January 1985 onwards the Nagaland Government became more offensive in its design to forcibly occupy Assam areas which led to escalation of tension in the area. They have listed 26 such incidents of border violations and of Interim Agreements in their Memorandum. The incidents are mostly in the nature of assault, intimidation of the villagers as well as the officials of the Assam Government, forcible collection of taxes from Assam villagers, ambush of Assam patrol parties and killing of Assam forest villagers as well as Assam Police personnel.

3.35 The major factors contributing to the armed conflict, according to Assam, were the following :—

(i) 20th April Incident

On 20th April, 1985, the Wokha administration of the Nagaland Government unilaterally started

construction of fencing and construction of tubular structures on the northern side of the Quarantine Check Gate of Merapani encroaching on about 3 bighas of land belonging to one Puwaram Kachari, a forest villager of Assam. Earlier, the Nagaland authorities had constructed fencing on the southern side of the Inner Line Permit Check Gate encroaching on the land of Babulal Gore and completing the same by the end of March 1985, despite strong protests from the Assam authorities. The Wokha District officials went back on their assurance of stopping construction given in a meeting of the Deputy Commissioners held on 3rd April, 1985 and resumed their construction work on the 20th April, 1985. The Assam Police officials of Merapani Police Station seized the fencing material on the basis of an First Information Report lodged by Puwaram Kachari under section 447 and 506 of Indian Penal Code.

The Assam Government has stated that in 1966 and 1979 also similar attempts of fencing and construction were attempted by the Nagaland authorities and materials were seized by the Assam authorities. Despite this previous history and in the back-drop of the 18th January, 1985 decision of the Commissioners' Meeting, alternate site offered by Assam to Nagaland for the construction of Inner Line Permit Check Gate and other structures, the Wokha authorities took the law into their own hands and committed a serious violation of the agreement. The Assam Government has further contended that the intention of the Wokha Administration by constructing fencing and other tubular structure was to strengthen their position towards the Merapani bazar side and to establish a strong foothold in the area. The action taken by Assam was, therefore, lawful and in conformity with the Interim Agreement concerning the seizure at Inner Line Permit Check Gate.

(ii) 22nd April Incident

Just two days after the 20th April incident, another provocative action was taken by Deputy Commissioner (Wokha) and his officers. On 22nd April, Deputy Commissioner (Wokha) accompanied by Superintendent of Police (Border), Superintendent of Police (Wokha), Sub-Divisional Officer (Bhandari) and others, went to the Merapani Police Station with a view to intimidate petty police officials of the Police Station with the intention of retrieving the fencing material seized on the 20th April, 1985. Deputy Commissioner (Wokha) abused the police officers of Merapani Police Station in objectionable language and went on checking the rooms and barracks of the Merapani Police Station in an undignified manner. He (Deputy Commissioner, Wokha) attempted to take away the seized iron post, forcibly but was prevented by the officers of the Merapani Police Station. The Deputy Superintendent of Police of Nagaland Armed Police attempted to snatch away the shotgun of an officer of the Assam Police.

At the time of detection of seized fencing material and the attempt of Deputy Commissioner (Wokha) to take away the same forcibly, an accidental firing took place from a G.F. Rifle of Prafulla Bora while the

armed police were in 'stand to' position to pay respect and compliments to the high officers of the Wokha Administration. The Deputy Commissioner (Wokha) made an allegation that he had been fired at by an officer of the Assam Police whom he later identified as Mukund Baruah.

Additional Deputy Commissioner (Border), Jorhat & S.P. (J) arrived at the spot, made enquiry into the firing incident as alleged by Deputy Commissioner (Wokha) and were convinced that it was a case of accidental firing without any intention to harm Deputy Commissioner (Wokha) or any other officer of Nagaland. Discussions took place between Deputy Commissioner (Wokha) and other Nagaland officers, Additional Deputy Commissioner (Border) and Superintendent of Police (Jorhat) and it was agreed that the Nagaland Armed Police personnel would be withdrawn and the mob dispersed from both sides.

The Assam side has said that it was this unauthorised entry of Deputy Commissioner (Wokha) and other officers of Nagaland into the Merapani Police Station that greatly contributed to aggravate the situation which was already tense and was the beginning of the future more serious incidents. While returning from the Merapani Police Station, Deputy Commissioner (Wokha) left behind a contingent of Nagaland Armed Police stationed at the Inner Line Permit Check Gate.

A meeting was held on 25th April, 1985 between Deputy Inspector General of Police (Eastern Range), Additional Deputy Commissioner (Border), Jorhat and Deputy Inspector General of Police (Border), Nagaland and it was agreed as under :

- (i) All Nagaland Armed Police would be withdrawn from Merapani Check Gate leaving behind only those personnel authorised by the Interim Agreement of 1972.
- (ii) Bunkers erected by Nagaland Armed Police at Merapani would be dismantled.
- (iii) Any points of conflict would be discussed at the Commissioner's level meeting.

At the end of the meeting, Deputy Inspector General of Police (Border) refused to finalise and sign the agreement on the plea that the seized iron posts should be returned first though this point was not originally raised in the meeting. He further stated that though he would try to withdraw the Nagaland Armed Police it would largely depend on the Deputy Commissioner (Wokha) as the force was deployed at his instance.

(iii) 29th April, 1985 meeting between DC (Wokha) and DC (Jorhat)

A meeting was held at Merapani Police Station on 29th April, 1985 between Deputy Commissioner (Wokha) and Deputy Commissioner (Jorhat) to discuss the situation resulting from the incidents of 20th April and 22nd April and defuse the mounting tension. Deputy Commissioner (Jorhat) asked for

withdrawal of Nagaland Armed Police from Inner Line Permit Check Gate but Deputy Commissioner (Wokha) maintained that he would withdraw the Nagaland Armed Police only on condition that Assam should withdraw Assam Police Station and all Border out posts in Doyang Reserve Forest. This was beyond the jurisdiction of Deputy Commissioner (Jorhat). As such no agreement could be arrived at between the two Deputy Commissioners. The Assam side maintains that Deputy Commissioner (Wokha) had added a new dimension to the problem of withdrawal of Nagaland Armed Police by putting in conditions which were not authorised by his Commissioner or the Nagaland Government.

Soon after the departure of Deputy Commissioner (Wokha), at about 3 P.M. on 29th April one platoon of Nagaland Armed Police came in trucks loaded with bamboos and wooden posts and started erecting fencing extending towards Merapani bazar. They also started roofing two tubular structures which were constructed on the land of Puwaram Kachari. The construction activity continued on 30th April, 1985 also, unmindful of reaction which would follow from the Assam side.

(iv) *1st May Agreement between the DIG (Border), Nagaland and DIG (Eastern Range), Assam*

The existing tense situation in the Merapani area further deteriorated after the 22nd April incident. The Nagaland Government informed the Central Government as well as the Assam Government of their great displeasure about the firing at Deputy Commissioner (Wokha). Assam side maintained that it was an accidental firing and the allegation of Deputy Commissioner (Wokha) was false and baseless. The Commissioner, Nagaland, declined to meet Commissioner Assam on 29-30 April, 1985, in view of the inaction of Assam Government against the Assam Police Personnel who attempted to fire at Deputy Commissioner (Wokha).

A meeting was arranged on 1st May, 1985, by the Inspector General of Police (Border), Assam, attended by Deputy Inspector General (Eastern Range), Assam with Deputy Inspector General of Police (Border), Nagaland. It was decided in the meeting that Nagaland would demolish its bunkers constructed by the Nagaland Armed Police, dismantle fencing and withdraw the Nagaland Armed Police from the Inner Line Permit Check Gate by 2-5-1985. It was further decided that on withdrawal of the Nagaland Armed Police, Assam would also withdraw the additional armed police deployed in the wake of deployment of the Nagaland Armed Police and that Assam would return the seized fencing material in 'zimma'. In pursuance of the said decision, two bunkers were partially dismantled on 4-5-1985 by the Nagaland Armed Police but reconstructed on 9-5-1985 which negated the aforesaid agreement. It is Assam's case that Deputy Commissioner (Wokha) with the tacit backing of the local politicians stalled the withdrawal of the Nagaland Armed Police from the Inner Line Permit Check Gate on one pretext or the other with

the result that the First May Agreement remained a dead letter.

(v) *Events between 1st May and 30th May, 1985*

Assam has submitted that the 1st May Agreement having been negated completely by the intransigent attitude of Deputy Commissioner (Wokha), a further aggressive posture was adopted by him in completing the fencing on the northern side of the Inner Line Permit Check Gate by 15th May, 1985 and raising a sign board in front of the Check Gate reading "Government of Nagaland, Office of the Agronomist, Nagaland Seed Farm, Merapani".

The Chief Secretary, Assam, approached the Chief Secretary Nagaland for a meeting at Shillong on 9-5-1985 as the latter was to visit Shillong in connection with the North-Eastern Council Meeting. But, as the North Eastern Council Meeting was postponed, the Chief Secretary, Assam, requested his counterpart for a meeting either at Jorhat or Golaghat on 13-5-1985. Chief Secretary, Nagaland, did not reach Jorhat or Golaghat and the meeting could not take place. The Assam Government approached the Union Home Ministry on 16-5-1985 requesting for a Commissioner level meeting in the presence of a Central Observer to defuse the mounting tension in the area. The meeting was proposed to be held on 22-5-1985 but was postponed till 3-6-1985 at the instance of the Home Ministry. Meanwhile, a decision was taken in a meeting by Chief Secretary, Assam, with senior Assam Government officials to strengthen the Assam Armed Police in the Merapani area for protection of life and property of Assamese settlers. A decision was also taken to set up a forest check gate beyond the Inner Line Permit Check Gate near the foothills with a view to prevent illegal movement of forest produce of Assam.

Commissioner-level meeting on 3rd and 4th June, 1985

3.36 As agreed to earlier by both the State Governments and the Union Home Ministry, the Commissioner level meeting was held at Chumukedima (near Dimapur) on 3rd June, 1985. As the Central Observer could not reach in time the meeting was postponed to 4th June, 1985. While the meeting was in progress, the Nagaland Armed Personnel accompanied by armed Naga villagers mounted an unprovoked attack on the Assam Police Posts and Border Outposts in the Merapani area. On receipt of the said information of attack made by the Nagaland Armed Police and Naga armed villagers on the Assam Police Posts, it was decided in the meeting that the Deputy Inspector General of Police (Eastern Range), Assam, Deputy Inspector General of Police (Border), Nagaland and Deputy Inspector General of Police (Nagaland Armed Police), Nagaland should go to Merapani to put an end to the firing and to disengage the forces. The Central Observer also agreed to the proposal. Though the Nagaland officers present in the said meeting accepted the proposal, the Deputy Inspector General of Nagaland declined to accompany Deputy

Inspector General of Police (Eastern Range), Assam. The Deputy Inspector General of Police, Nagaland wanted to come *via* Wokha which would take about 9 hours to reach Merapani. This unfriendly attitude of high police officers of Nagaland would clearly show that they were not interested in defusing the situation and bringing about cease-fire. Ultimately, it was decided that the Deputy Inspector General of Police (Eastern Range), Assam would proceed to Merapani direct and the Deputy Inspector General of Police, Nagaland would come *via* Wokha. It was further decided in consultation with the Central Observer that a cease-fire would be declared on both sides at 8 A.M. on 5-6-85 and that a white flag would be shown as an indication of cease-fire. The Deputy Inspector General of Police (Eastern Range), Jorhat arrived at Merapani at 8 P.M. on 4-6-1985.

3.37 In pursuance of the agreement arrived at Chumukedima (Dimapur), the Deputy Inspector General of Police (Eastern Range), Jorhat declared cease-fire and showed white flags indicating cease-fire on the part of Assam. Thereafter, it was announced over loud speaker that the Deputy Inspector General of Police (Eastern Range), Jorhat was awaiting to meet the Deputy Inspector General of Police, Nagaland. Meanwhile, the Assam Police stopped firing at 8.10 A.M. in honour of cease-fire already announced by the Deputy Inspector General of Police (Eastern Range), Jorhat but there was no response from the Nagaland side. The Nagaland Armed Police even fired at the vehicle of the Deputy Inspector General of Police (Eastern Range) with a white flag and did not spare the ambulance with a red cross sign and a white flag which had gone to collect injured persons from Velluguri side. The Nagaland Armed Police continued their attack with more ferocity being armed with sophisticated weapons like 2" mortars, LMGs and rocket launchers. The Nagaland Armed Police was supported by about 4,000 to 5,000 armed villagers including village guards of Nagaland.

3.38 The Nagaland Government went to the extent of disowning the decisions of the meeting held between the Commissioners of both the States on 3rd/4th June, 1985. The advancing Nagaland Armed Police captured all the Assam Police posts, burnt the Merapani Police Station and Merapani Bazar and rendered thousands of villagers homeless who fled to the Golaghat side for taking refuge in the relief camps. Ultimately, another meeting of the Commissioners of both the States was held at Chumukedima on 5th June, 1985 and it was agreed to effect cease-fire and induct a neutral force like the Border Security Force in the Merapani area with a view to disengage the forces from both sides. It was also agreed that both sides will withdraw to the position held before 20-4-1985. This meeting was followed by another meeting on 7th June, 1985 between the two Chief Ministers at Imphal under the auspices of the Governor of Nagaland. Decisions taken in the 6th June meeting were confirmed and it was decided to restore normalcy in the area except that police forces will go back to the position held before 26-5-85.

3.39 To sum up, it is the case of the Assam Government that it is the Nagaland Government which is responsible for the armed conflict. It was solely responsible for various acts of omission and commission in violating various terms of agreements between the two and not honouring the constitutionally and legally constituted boundary as per the Notification of 1925. The illegal, unreasonable and unconstitutional claims of Nagaland over the reserved forests of Assam have been the root cause of the conflict. More specifically, Nagaland were responsible for the incident of 20th April, 1985—fencing was taken up at the Inner Line Permit Check Gate without consulting Assam or getting its approval. Not only this, Nagaland had trespassed into private land in making such construction. Then, on the 22nd April, 1985 the Deputy Commissioner (Wokha) who had no jurisdiction whatsoever went into the Merapani Police Station along with his officers and tried to forcibly remove the fencing material which had been seized on the 20th of April. He had no business or authority to enter the Police Station which was in Assam State. Thereafter, due largely to the actions of Deputy Commissioner (Wokha), the agreement of 1st May, 1985 under which armed police from both sides was to go back to the pre-20th April, 1985 position could not be implemented.

3.40 Tension continued to mount and meanwhile in spite of the full knowledge of the feelings of the Assam authorities in the matter, the Nagaland authorities completed fencing at the Inner Line Permit Check Gate and also the tubular structures. Eventually, when the whole matter was being gone into in the presence of the Central Observer at the Chumukedima meeting the Nagaland authorities according to a pre-planned move of theirs attacked Assam and over-ran the Merapani area, in the process causing a great deal of destruction to property and loss to human lives.

The Nagaland Case

3.41 The Nagaland Government, like the Assam Government, firmly believes that the basic cause of the clashes between the two States which have occurred from time to time, the last of these being in the Merapani area between June 4th to June 6th, 1985, is the unresolved boundary question. The Government, in their memorandum of statement/affidavit and counter-affidavit respectively documented as NI and NII have set out their case as below.

Historical Background

3.42 According to Nagaland, during the pre-British days, the Ahom kings never exercised their suzerainty and control over the Naga tribes living in the hills adjacent to the Ahoms. Lands granted to Naga villages adjacent to the Ahom kingdom called Naga Khats were with the motive to appease the Nagas over whom the Ahom kings did not have any control. In fact, such grants were considered as a gesture of friendship and a measure of political expediency and administrative convenience. In this connection the statement

of Edward Gait, an authority on History of Assam is quoted :

"The hilly tract inhabited by the various tribes known to us collectively as Nagas had never been subjugated by the Ahoms and it was no part of the British policy to absorb it."

3.43 The first Naga Hills District was notified in 1867 by the British Government. The district boundaries of the then Naga Hills were first defined only in 1867 comprising the areas west of Doyang river upto Dikharu Nallah on the north-west and Doyang river and Langting Nallah on the south-west. By the 1875 Notification, a strip of land on the north between 'Kaliani' river and Tarapung Nallah was added to the Naga Hills District. In 1890, Mokokchung Sub-Division was created by adding the area north-east of the Doyang river upto Dikhu river to the Naga Hills District.

3.44 In 1898, by another notification issued on 9th December, the vast area of the then Naga Hills District, south-west of the Doyang river, was transferred to Nowgong and Sibsagar districts respectively. By 1901, *vide* notification dated 11-4-1901 more tracts were transferred to Sibsagar district. The 1903 Notification made further amendment of Naga Hills District boundaries with Nowgong and Sibsagar Districts. By the 1923 Notification, a portion of the Naga Hills District situated in the extreme south called Digir Mouza was transferred to the Cachar district. In these transferred Naga territories are located 21 reserve forests of which 10 were constituted as Naga Hills Reserve Forests as they were constituted before the areas were transferred from the Naga Hills District, whereas 11 Reserve Forests were constituted after the areas were actually transferred out from the then Naga Hills District. The Nagas had been demanding restitution of these Naga territories transferred to the adjoining districts of Assam even before India attained Independence.

3.45 The Nagaland Government have said that it was not correct to state that there was east-ward expansion of the then Naga Hills District in 1882 to include four Lotha villages. Lotha Naga villages in fact were then within the Naga Hills District when the Naga Hills District boundary was notified in 1875, and when the then Mokokchung Sub-Division was created in February 1890 and added to the then Naga Hills District, the Lotha area was also brought under the Mokokchung Sub-Division of the then Naga Hills District.

3.46 The Reserve Forests, as detailed above, formed part of the Naga Hills District and were subsequently alienated from the Nagas by the British Administration purely for economic and administrative convenience and expediency. Therefore, it is incorrect on the part of Assam to say that the Nagas encroached into the said Reserve Forests or that underground Nagas with their families settled in the said Reserve Forests. The Nagaland Government denies that the said Reserve Forests belong to Assam.

3.47 Further, that it is not correct on the part of the Assam Government to say that the Nagaland Government's claims over large chunks of valuable forest and tracts are not based on any historical facts. The claim of the Nagaland Government on these areas lying in the disputed border areas, are, in fact, based on historical facts; because those areas were transferred out from the Naga Hills District when it was a part of the State of Assam till 1st December, 1957. This reduction of the territory of the Naga Hills District predominantly occupied by the Nagas is resented by the Naga people. For a long time they have been insisting that the reserve forests and other areas which originally formed part of the Naga Hills District should be re-transferred to them.

3.48 In 1947, the Naga National Council met the Governor of Assam, Sir Akbar Hydari, for a political settlement on various issues concerning the Naga people and the Naga inhabited territories just before the attainment of Independence in August 1947. A Nine point Agreement was signed in June 1947. One of the points agreed upon, as embodied in Clause 6 is as follows :—

"6. Boundaries—That the present administrative divisions should be modified so as :

- (i) to bring back into the Naga Hills District all the forests transferred to Sibsagar and Nowgong Districts in the past;
- (ii) to bring under one unified administrative unit as far as possible all Nagas;
- (iii) no areas should be transferred out of the Naga Hills District without the consent of the Naga National Council."

The said "Nine Point Agreement" was followed by a written assurance dated 22nd June, 1948 given by the then Governor of Assam and the then Premier of Assam assuring the Naga National Council of full implementation of the "Nine Point Agreement".

By and under the Naga Hills-Tuensang Area Act, 1957, an administrative unit comprising of the Naga Hills District of Assam and the Tuensang Frontier Division of the North East Frontier Agency, known as the Naga Hills-Tuensang Area (NHTA) was constituted on 1st December, 1957. The administration of this unit was vested in the authorities mentioned in the said Act and not in the Government of Assam.

3.49 It is further stated that in July 1960, a Sixteen Point Memorandum was submitted by the Naga Peoples Convention to the Government of India containing the demand for statehood and various points connected therewith. Point No. 12 of the said Memorandum is as under :—

"12. Re-transfer of all reserved forests"

3.50 All the reserved forests and other Naga areas transferred out of Naga areas will be returned to Nagaland with a clearly defined boundary under the present settlement.

3.51 After the submission of the said memorandum, discussions took place between the Naga Peoples Convention and the Government of India regarding creation of a new State of Nagaland. The minutes of discussion on the said '16 Point Agreement' mentioning the conclusions reached on each of the said points were duly recorded.

3.52 The Government of India accepted the demand for Statehood and on 1st August, 1960, the Prime Minister, Pandit Jawaharlal Nehru, announced in the Lok Sabha that a new State of Nagaland would be created.

3.53 With regard to Point No. 12, in discussions held with the Prime Minister and the Foreign Secretary, Pandit Nehru stressed that the immediate priority was the creation of a new State of Nagaland and for that purpose it was essential that the new State should have a defined territory. The Delegation was persuaded that the existing boundary line between the Naga Hills-Tuensang Area and the adjoining Districts of Assam should be accepted by the Naga people for the time being, as this would facilitate the early creation of the new State. The Prime Minister assured the Delegation that later after Nagaland had become a State, it would be possible to redraw and redefine its boundary by re-transfer of the said reserved forests and contiguous Naga inhabited area to Nagaland. As this would involve transfer of area from one State to another, it was indicated that the procedure prescribed by Articles 3 and 4 of the Constitution of India would have to be followed. This Point was recorded as follows :—

"The Delegation wished the following to be placed on record :

The Naga Delegation discussed the question of inclusion of the reserved forests and contiguous areas inhabited by the Nagas. They were referred to the provisions in Articles 3 and 4 of the Constitution prescribing the procedure of the transfer of areas from one State to another."

3.54 On the basis of the above, 16-Point Memorandum, according to Nagaland, Article 371(A) was specially inserted in the Constitution making special provision for the State of Nagaland. The demand contained in Point No. 12 in the 16-Point Memorandum could not be incorporated in the said Amendment (13th Amendment Act of 1962) because any alteration of boundary could only be done in accordance with provisions of Articles 3 and 4 of the Constitution of India. Thus, the need for alteration of boundary and the demand made for such alteration were accepted in principle but the implementation thereof as agreed upon was postponed to be done in accordance with the provisions of the Constitution.

3.55 Unfortunately, no steps have been taken upto today by the Central Government for redrawing the boundary of Nagaland by re-transfer of the said reserved forests and other areas to the State of Naga-

land. The border dispute has thus remained unsettled, resulting in constant friction and tension in the border areas. The situation has been further aggravated by various wrongful acts of the Assam Government. The Nagas in the border areas including officials of the Nagaland Government were subjected to constant harassment by the Assam authorities. Indiscriminate arrests of Nagas were made, their vehicles were seized, free movement was obstructed or prevented, and many Nagas in the border areas were detained by the Assam authorities on flimsy grounds and trumped-up charges. All these factors were responsible for and resulted in intermittent border clashes between the armed police forces of both the States.

Appointment of Shri Sundaram

3.56 The Central Government appointed Shri K. V. K. Sundaram to enquire into the border question and to make recommendations in respect thereof. While Shri Sundaram was engaged in examining the boundary problem and pending submission of his report, the two State Governments entered into four Interim Agreements in respect of the disputed areas excluding the three reserved forest areas of Diphu, Rengma and Nambore South. (The main ingredients of these Interim Agreements have already been indicated while discussing the Assam case earlier). Shri Sundaram submitted his report to the Central Government and this was made available to the two State Governments sometime in the middle of 1979 for their comments. The State Government of Nagaland did not accept the said report as it felt that it was completely one-sided. The State Government, however, submitted a Memorandum to the Ministry of Home Affairs, Government of India, stating its case in detail in justification of the areas which needed to be included in the State of Nagaland by refixation of the boundaries between the two States. The State of Assam also submitted their Memorandum in respect of the said report. The objections so submitted by the State of Nagaland are still pending consideration with the Government of India and no decision in the matter has been made. The Chief Minister of Nagaland in his reply dated 15th June, 1981 to the letter dated 21st March, 1981 from the Union Home Minister reiterated the stand of the Nagaland Government in regard to the boundary question as earlier submitted in respect of the objections raised on Shri Sundaram's report. The position had also been earlier explained by the Nagaland Chief Minister in reply to the Prime Minister's letter of 25th January, 1979, reiterating the assurance given to Nagaland at the time of the formation of a separate State requesting for initiation of the process of demarcation of the boundary and re-transfer of the reserved forests and contiguous areas inhabited by the Nagas to Nagaland. The Government of India were apparently satisfied inasmuch as no further communication was made in that regard thereafter. The boundary dispute thus remained unsettled for the last 23 years after the State of Nagaland came into existence. It has been further said that if this dispute had been resolved earlier by the Central Government there would have been no border conflict.

The 1979 Agreements

3.57 On 2nd January 1979, the Government of Assam and Nagaland entered into an agreement through their respective Chief Ministers. Both the States reaffirmed their commitment to adhere to the 1972 agreement and agreed to set up a high level machinery with Commissioners from both sides to hold periodical co-ordination meetings to sort out the violation of the 1972 agreement and other ancillary problems and difficulties.

3.58 In spite of this agreement, shortly thereafter on 5th January 1979, another armed clash according to Nagaland took place in the border area between the Naga people and the unauthorised settlers from Assam occupying such area in violation of the agreement. As a sequel to this incident, the two Chief Ministers met again at Shillong and arrived at an agreement on 28th January 1979 containing amongst others, the following terms :—

- (i) The Government of Assam agreed to withdraw all Assam Armed Police forces from the areas inhabited pre-dominantly by the Nagas in Diphu, Nainbor and Rengma reserved forests and post only Central Reserve Police Force or Assam Rifles units in all such areas.
- (ii) Searches and arrest in Naga habitations would be made in the presence of Magistrates and civil police officials of both the States.
- (iii) The Chief Minister of Assam assured that any dispossession of Nagas from Doyang reserved areas in violation of the interim agreement would be remedied in all cases covered by the 1972 agreement.
- (iv) The overall operational command of the Central Reserve Police Force and the Assam Rifles will be with the Additional Inspector General of Police, Assam who will be assisted and advised by the Deputy Inspector General of Police of both the Governments.

Violation of 1972 and 1979 Agreements

3.59 The Nagaland Government maintain that the Government of Assam have repeatedly violated the terms of the 1972 Agreement particularly relating to the withdrawal of Armed Police Posts and the right of the Nagaland Government in respect of repair and reconstruction of the Inner Line Permit Check Gate at Merapani. They have quoted several instances of provocative acts committed by or with the support of the Assam Government in the Merapani area. Some of these acts of omission and commission of Assam have been cited by the Nagaland Government hereunder :

- (i) The 1972 Agreement provided for immediate withdrawal of Armed Police posts in two sectors i.e. Dessoi river to Gorojan stream sector. Further, the Agreement required that no new armed police posts should be set up within the reserved forests

or within a belt of the border areas to be determined by the Inspectors General of Police of both the States. At the date of the 1972 Agreement, Seven armed police posts were maintained by Assam in these two sectors. None of these posts was withdrawn. On the contrary the existing posts were reinforced and new armed police posts were created. In all, fiftythree such posts came into existence by 1985.

- (ii) (a) Many villagers, including persons from Nepal and Bangladesh, were settled in the said Reserved Forests, thereby converting large portions of the said forests into agricultural lands.
- (b) Particulars of existing leases and/or contracts in respect of the said Reserved Forests were not given to the Nagaland Government, as required by the 1972 Agreement.
- (c) Fresh leases and contracts for exploitation of those reserved forests were granted in violation of the 1972 Agreement, resulting in denudation of those reserved forests and loss of valuable timber.
- (iii) Illegal arrests and searches of the Naga inhabitants in the border areas and their residences were made by the Assam Government. Such arrests and searches were not made in the presence of the Magistrates and Civil Police officials of both the States as required by the 1979 Agreement.

3.60 Besides, various other wrongful acts were indulged in by the Government of Assam, which aggravated tension in the border areas. Some instances are given below :

- (i) The Assam Armed Police regularly interfered and/or obstructed the free movement of Nagas and also officials of the Nagaland Government all along the border. In this connection, numerous instances of harassment at the check posts were reported to the Government of Nagaland from time to time.
- (ii) The Assam people with the support of or under the protection of Assam Armed Police forcibly occupied lands belonging to Nagas, indulging in arson and looting.
- (iii) The Assam Armed Police made indiscriminate arrests of Nagas on flimsy pretexts, *inter alia*, by misuse of the special powers conferred by the Assam Disturbed Areas Act, 1955 and Armed Forces (Assam and Manipur) Special Powers Act, 1958. Border areas were declared to be disturbed areas and these Acts were exercised in derogation of usual procedures.

3.61 During the period between 1972 and 20th April 1985, a number of wrongful and provocative acts were committed by or with the support of the

Assam Government in the Merapani area. The main thrust of these wrongful acts relate to the non-withdrawal of 5 armed police posts out of the 7 posts maintained by the Government of Assam in the Merapani area; opening of new Police Check Gates at Dighalpan on the Merapani-Uriamghat Road near Merapani and Vellugur establishment of Police Station at Merapani opposite the Nagaland Inner Line Permit Check Gate, etc. The Assam side also resorted to illegal settlement of forest lands with Assamese; undertook eviction proceedings against Naga settlers, continued their harassment and intimidation, assault and arrest of Nagas and destruction of their properties.

The Inner Line Permit Check Gate

3.62 Nagaland goes on to discuss various major events which led to the occurrence of the armed conflict in June, 1985. One of the issues which contributed to the increased tension and friction in the Merapani area was the question of repair and rebuilding of the Nagaland Inner Line Permit Check Gate at Merapani by the Nagaland Civil Administration. This check gate was set up in 1959 and was manned initially by 12th Assam Rifles. After the Naga Hills Tuensang Area was constituted, the check gate was taken over by the Wokha District Administration of Nagaland in 1966. By the 1972 Agreement it was agreed that this check gate would continue to be manned by seven unarmed police of Nagaland and this was continued to be done after 1972.

3.63 In course of time, the check gate became old and dilapidated and it became necessary to repair the same. In March, 1979, the work of repairing of the dilapidated police accommodation at the Inner Line Permit Check Gate was started by the Wokha District Administration. Immediately, thereafter, on 16th March, 1979, the Assam Police seized the building materials from the site by reason of which the work had to be stopped. The Commissioners of Assam and Nagaland met for discussion of the situation and for resolution of the problem at Bokajan on 21st March, 1979, and the following decisions were taken :—

- (i) The Deputy Commissioner, Wokha, and the Deputy Commissioner, Sibsagar agreed to meet on 22nd March, 1979 at Merapani, to make a joint enquiry and ascertain whether the land where the construction had been started was the Patta land of an individual, and they would recommend what measures should be taken for restoration of normalcy in the area.
- (ii) The Assam Administration would return the building materials seized at Merapani, at site.
- (iii) The Nagaland Administration would suspend new construction.
- (iv) The Nagaland Armed Police posted at the construction site would be immediately withdrawn.

3.64 Subsequently, the actual minimum requirement of accommodation for police personnel were discussed in 11th September 1979 meeting of the two State Governments. However, for the first time, Assam raised an issue of forcible occupation of the land on which construction was to be started by Nagaland as belonging to a forest villager namely, Paoram Kachari. Rent was demanded for the use of the land from Nagaland. This issue raised an unnecessary controversy reducing the State of Nagaland to the status of an Assamese settler which the Nagaland Government refused to accept. In fact, these objections were raised by Assam merely to prevent the repairs to the Inner Line Permit Check Gate. Thereafter, in the meeting of the Commissioners of Upper Assam Division, Assam, and Nagaland held on 14th May, 1982, it was agreed that Deputy Commissioner Wokha would construct Nagaland Inner Line Permit Check Gate building at Merapani and the decision of the question of payment of rent was kept in abeyance. The Commissioner, Upper Assam Division also assured that the payment of rent would be taken up by him with the Revenue Department of the Government and some solution would be found. However, in the subsequent meeting of 7th June, 1982 held between the Chief Secretaries of Assam and Nagaland an offer of allotment for an alternative site near the present site for construction of the Inner Line Permit Check Gate building was made. Thereafter, nothing was done by the Government of Assam in communicating their decision about the start of construction of Inner Line Permit Check Gate by the Nagaland authorities. The issue thus lingered on for five years i.e. between 1979—1984 and the work of reconstruction of the Inner Line Permit Check Gate was kept in abeyance because of the untenable allegations and charges made by the Government of Assam and reasons of false assurance given by it that the matter was being looked into and would be resolved.

3.65 As no agreement resulted in spite of these meetings between the high officials of both the State Governments, the Wokha District Administration decided to call for tenders for the work of reconstruction of the Inner Line Permit Check Gate at Merapani in 1984. The tender for the said work was accepted and in March, 1985 building materials started arriving at the gate. The Government of Assam intended to stop the reconstruction of the check gate at all costs and this was made clear by Deputy Inspector General of Police (Eastern Range), Jorhat to Sector Commander 'D', Golaghat and Officer Commanding Merapani to use force for stopping the construction work by Nagaland authorities. This clearly showed the intention of the Assam Government; its vacillating attitude towards Nagaland for the repair of the Inner Line Permit Check Gate which had been allowed to be continued as per 1972 Agreement. In this way Assam was preparing itself as early as in March, 1985 for armed hostility against Nagaland.

20th April, 1985 Incident

3.66 The 20th April incident for which Assam is squarely responsible is the first of the immediate chain

of events leading to the armed conflict. On this day, while fencing work at Nagaland Inner Line Permit Check Gate at Merapani was going on, the Sub-Divisional Police Officer, Golaghat along with Sub-Divisional Officer, Golaghat and Border Magistrate, Merapani, Assam forcibly seized and dismantled the fencing, stopped the work, seized building materials and removed the same to Assam Police Station at Merapani. The Officer Commanding, Police Station, Bhandari and the Assistant Sub-Inspector, Nagaland Police at Merapani who were present at the Nagaland Inner Line Permit Check Gate at that time were kept at gun point while the materials were removed. This was done by the Assam Armed Police with the help of the local Assamese public. Request made by Sub-Divisional Officer (Civil), Bhandari on behalf of Nagaland Civil Administration for release of the materials was turned down by the Assam Officials. This incident created tension and resentment among the Nagas in the border areas.

22nd April Incident

3.67 The second incident took place on 22nd April, 1985. On that day Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Border Magistrate, Merapani, Nagaland Superintendent of Police (Border), Nagaland and Deputy Superintendent of Police 4th Nagaland Armed Police, Merapani and Sub-Divisional Officer, Bhandari, visited the Assam Police Station at Merapani at about 12.00 noon. The Deputy Commissioner Wokha had earlier informed the Officer Commanding Merapani Police Station of his proposed visit to his Police Station and the object of his visit which was to ascertain how the incident took place on 20th April, 1985 and where the seized materials were kept. While going around the police station, the Deputy Commissioner discovered that some fencing materials were kept under the blankets behind the Police Station and on removing the blankets, he found that iron posts, plates etc. were lying there. While the Deputy Commissioner lifted one post plate and showed it to the persons present there, one Mukund Barua, a Sub-Inspector of Assam Police, fired one round from his sten-gun at the Deputy Commissioner which missed him narrowly. The said Sub-Inspector shouted command to his men and all of them raised their rifles in cocked position. Then the said Mukund Barua came out of his bunker with a stengun pointing at the Deputy Commissioner and other officers and threatened to shoot down any one attempting to come near him. He then left by a nearby nallah. After this the Deputy Commissioner Wokha and the other officials of Nagaland left the Police Station. On the same day, Deputy Commissioner, Wokha reported the incident to the Commissioner, Kohima stating that the situation was dangerous due to large scale deployment of forces by the Assam Government in Merapani area and requested reinforcement of the Nagaland Armed Police at Merapani to meet the situation.

3.68 The firing at the Deputy Commissioner, Wokha at the Assam Police Station at Merapani coming closely on the heels of the forcible seizure of

materials from the Inner Line Permit Check Gate at Merapani two days earlier, greatly aggravated the tension prevailing at Merapani and the feeling of insecurity amongst the Nagas and made the situation highly explosive. This situation would not have come about but for the wrongful actions on the part of officials of the Assam Government on 20th April, 1985 and 22nd April, 1985.

3.69 Instead of apologising and expressing regret for the firing at the Deputy Commissioner, Wokha, the Deputy Commissioner, Jorhat charged Deputy Commissioner, Wokha for breach of peace and tranquillity of the area by trespassing into the Merapani Police Station and his officers attempting to snatch away some iron posts seized earlier by Merapani Police officials in connection with the police case. The Assam Government, at the behest of their officers, levelled allegations against Deputy Commissioner Wokha for abusing and shouting at the police officers of the Merapani Police Station and surrounding the Police Station compound with a large contingent of the Nagaland Armed Police. The contention of the Assam Government that this was a case of accidental firing when the rifle of a GF rifleman went off and that the ballistic cartridge was absolutely harmless is absolutely false. The Commissioner, Kohima and the Nagaland Government strongly protested to the Assam Government for the unwarranted action of the Assam officials at the Merapani Police Station in resorting to firing at the Deputy Commissioner, Wokha.

3.70 Following the incident of 22nd April, 1985, Assam Government reinforced its police station by sending one battalion of Assam Armed Police thereby surrounding the Nagaland Armed Police Camp. This prompted Sub-Divisional Officer, Bhandari to request Deputy Commissioner, Wokha for reinforcement of the Nagaland Armed Police in the area. The Assam Police with the help of the Assam Public undertook construction of a building at the Merapani Police Station on 28th April, 1985 and started digging trenches. In view of this position, Deputy Commissioner Wokha asked for one Company of Nagaland Armed Police to be stationed at Merapani.

29th April Meeting

3.71 A meeting was held between the Deputy Commissioner, Jorhat and Deputy Commissioner, Wokha on 29th April, 1985 at Merapani Police Station to discuss the situation which had developed after the 22nd April incident. At the meeting, Deputy Commissioner, Wokha maintained that the entire area proposed to be fenced by them had been under their actual occupation since 1966 and nobody ever disputed the possession over the said land till 1982. This check gate was specifically allowed to be continued by the 1972 Agreement. Deputy Commissioner, Wokha also strongly protested against the action of the Government of Assam in setting up a new police station towards the Nagaland side of the Nagaland Inner Line Permit Check Gate at Merapani and demanded that in order to restore normalcy in the area, the Assam

Government should withdraw the Police Station and all Border Out Posts in the area and allow the Government of Nagaland to continue to run the Nagaland Inner Line Permit Check Gate at Merapani in peace as per the terms of the 1972 Agreement.

3.72 With reference to the 1st May agreement arrived at Golaghat in a meeting with the Deputy Inspector General of Police (Eastern Range) and Inspector General of Police (Border) Assam, Deputy Inspector General of Police (Border) Nagaland, expressed his views that the tense situation at Merapani could be defused only by way of simultaneous withdrawal of Assam Armed Police and Nagaland Armed Police in the Merapani area and reverting to the situation prior to 20th April 1985 and returning the fencing material forcibly taken away on 20th April. He also pointed out that before agreeing to the above, he would have to obtain approval from the Government of Nagaland. This was agreed by Inspector General of Police (Border) Assam and that accordingly time was fixed 2nd May 1985 for conveying the approval of the Government of Nagaland after obtaining the same on telephone. Minutes of the said meeting was not recorded as it was not considered necessary by the officers participating in the meeting. Deputy Inspector General of Police (Border), Nagaland met Chief Secretary, Nagaland in the morning of 2nd May, 1985 at Kohima and also met Commissioner, Nagaland at Dimapur and communicated approval of Government of Nagaland to the decision made in the meeting held at Golaghat, at about 1400 hrs on 2nd May 1985 through telephone to Shri Sumant, Deputy Inspector General of Police (Eastern Range), Jorhat. The Superintendent of Police (Border) who was already instructed to carry out withdrawal and dismantling of bunkers as per approval of the Government of Nagaland conveyed to him, reiterated that withdrawal of armed police from Nagaland Check Gate could not be done as Assam Armed Police was not dismantling their bunkers as earlier agreed to by them.

1st May Agreement and Subsequent Events

3.73 Nagaland blames Assam for its insincerity in implementing the 1st May Agreement regarding withdrawal of Armed Police forces, removal of bunkers and return of fencing material. While the Nagaland authorities did carry out the dismantling of two bunkers on 4th May, 1985, there was no corresponding response from the Assam side, and as such, the bunkers were reconstructed. It is the case of Nagaland that the withdrawal of armed forces from Merapani was to be simultaneous and not unilateral in the sense that Assam would follow Nagaland having done their part of the Agreement. Nagaland maintains that there was no real intention on the part of Assam to implement the agreement and they only wanted that Nagaland should quit the Merapani area and go back to the foothills. This is evident from the fact that the Commissioner Upper Assam Division ignored the 7th May, 1985 wireless message of Commissioner, Kohima who pleaded for simultaneous withdrawal under the supervision of senior police officers of both States in order to reduce tension in the area. Instead,

Assam Government went ahead with further reinforcement of their armed police in the area which created panic amongst the villagers and the Nagaland police personnel posted at or about the Nagaland Inner Line Permit Check Gate at Merapani. The Assam Police battalion constructed bunkers near the house of Kula Saikia at Merapani village where the Assam police kept vigil standing day and night. In view of this situation, Deputy Commissioner, Wokha instructed Sub-Divisional Officer, Bhandari and Superintendent of Police (Border) to complete the work of fencing of the Inner Line Permit Check Gate which was done with the help of Naga villagers at Merapani on 15th May, 1985. The Assam Police increased their wrongful activities of harassing Naga villagers like Yihamo Lotha of Liphayan village, M. Lotha, a School teacher of Bhandari etc. These wrongful acts were reported to the Assam Government and also the Central Government. There was no remedial action taken from the Assam side who went on strengthening their armed personnel in the area.

Establishment of Forest Check Gate on 26th May 1985 by Assam

3.74 The Assam Government resorted to the unprecedented act of setting up a so-called forest check gate about 2 kilo metres away from the Inner Line Permit Check Gate towards the foothills. This Check Gate was intended as a blockade to the Naga people from the foothills side and completely neutralised the functioning of the Inner Line Permit Check Gate. The Assam side also constructed a by-pass road behind the Assam Police Station to circumvent or by-pass the Nagaland Inner Line Permit Check Gate. This highly provocative action of Assam created panic among the Naga villagers who fled to the Bhandari side. Deputy Commissioner, Wokha, made frantic efforts to meet his counterpart to discuss the situation created by the forest check gate but in spite of his best efforts, no such meeting could take place. Deputy Commissioner, Wokha was of the opinion that this gate was nothing but an attempt to capture the Nagaland Inner Line Permit Check Gate at Merapani by creating an economic blockade. He, therefore, sent SOS messages to his Government and the Inspector General of Police for sending the Nagaland Armed Police in sufficient strength to safeguard the interest of the Naga inhabitants and Nagaland property. The Nagaland Government lodged a complaint with the Government of Assam and also the Home Ministry regarding the besieging of their Inner Line Permit Check Gate at Merapani opposite the Assam Police Station at Merapani within Nagaland about 250 yards from the Nagaland Armed Police Company Headquarters and stopping the movement of Nagaland vehicles between the Nagaland Armed Police Company Headquarters and the Nagaland Inner Line Permit Check Gate. According to Nagaland the situation became very alarming and highly explosive. This forest check gate was the single major factor which hurt the feelings of the Nagaland Government and the Naga people. This offensive action was mainly responsible for the armed conflict of June, 1985. Assam presented a *fait accompli* to the Nagaland authorities

by fortifying their forest check gate with a battalion strength of armed police personnel who had constructed bunkers with a view to compel the Nagaland authorities to remove their Inner Line Permit Check Gate.

3.75 The Nagaland Commissioner complained to the Commissioner, Upper Assam Division, on 28th May, 1985, about the explosive situation created by the forest check gate requesting him that both State forces should be withdrawn to the position that was in existence before 20th April, 1985. Unfortunately, his proposal went unheeded by the Assam Commissioner and nothing was done by the Assam Government to listen to reason in reducing tension. It appeared that Assam was now preparing for an attack on Naga establishments in the Merapani area with full strength. Finding no other alternative to make Assamese reason the Nagaland Chief Secretary in a meeting held on 28th May, 1985 decided to send reinforcements of Nagaland Armed Police under the charge of Deputy Inspector General of Police, Nagaland Armed Police, to the Merapani area to strengthen its position in the wake of the massive build-up of Assam Police by Assam.

30th May, 1985 Agreement between DIG (Eastern Range) and DIG (Border), Nagaland

3.76 Deputy Inspector General of Police, Nagaland Armed Police at Merapani, Deputy Inspector General of Police (Border), Nagaland, Deputy Inspector General of Police (Eastern Range), Assam held a meeting on 30th May, 1985 at the Assam Police Station, Merapani where it was decided that the Assam Police and Nagaland Armed Police should remain within their camps till 3rd June, 1985. In spite of this decision, the blockade between the Nagaland Inner Line Permit Check Gate and the Nagaland Armed Police Company Headquarters in Merapani village near the foothills continued to remain.

3.77 On 1st June, 1985 the Champaang Nagaland Armed Police post was cut off by the Assam Police battalion who opened fire towards Nagaland on the midnight of 28th May, 1985. They used 2" mortars, LMGs and .303 rifles. On that day the Nagaland Government Seed Farm irrigation canal was completely blocked by construction of a dam under the protection of an Assam Police battalion. The rations stock in the Government Seed Farm for the workers had completely exhausted because of the blockade and no relief measures could be extended to them. The Nagaland Armed Police personnel posted at the Government Seed Farm at Merapani sent SOS signals for relief measures. In spite of the 30th May Agreement between the Deputy Inspector General of Police, Assam Police battalion continued to patrol throughout the day and night in the area. Even Central Reserve Police Force was reinforced by inducting 20 Central Reserve Police Force personnel by the Assam side and they were used for enforcing the illegal blockade of the employees of the Nagaland Government Seed Farm. On 2nd June, 1985, the Assam police battalion again resorted to intimidating the Naga people about 2-3 Kilometres away from the Nagaland

Government Seed Farm. The Assam public aided by Assam police set fire to the house of Naga villager. By 3rd June, 1985 communication with Naga Armed Police personnel posted at the Nagaland Inner Line Permit Check Gate at Merapani and the Nagaland Government Seed Farm was totally cut off. The Assam Police battalion threatened to burn down Roni village. The villagers prayed to the Nagaland Government for protection. The situation, therefore, became highly explosive by the 3rd June, 1985.

Commissioners' Meeting at Chumukedima on 3rd and 4th June, 1985

3.78 The Commissioners' Meeting held at Chumukedima was attended by Inspectors General of Police, Deputy Inspectors General of Police and Deputy Commissioners of the border districts. In this meeting the Nagaland Inspector General of Police urged the Assam Government officials to remove the forest check gate or at least suspend its operation for a few days in order to defuse the explosive situation but the Assam Government officials were in no mood to comply with this request. In fact, the Commissioner, Upper Assam Division stated that the forest check gate was not in their brief and they could not remove it as it was a legal requirement and a reaction to the manner in which the Merapani situation had developed. As the Central Government Observer, Mr. S. R. Arya missed his plane at Gauhati and could not arrive at Dimapur in time, the meeting was adjourned to 4th June, 1985. It appeared that because of the heavy preparations made by the Assam Police, because of their better and well entrenched position surrounding the Nagaland Armed Police Posts, Inner Line Permit Check Gate and Nagaland Seed Farm, the Assam Government was expecting the Nagaland Government to surrender to their illegal demands and unreasonable attitude. While the meeting was in progress, a report was received at about 1630 hrs. that fierce fighting between the two police forces had started at Merapani at about 1600 hrs. The meeting concluded hurriedly with both sides agreeing to cease fire immediately. However, by the time the Deputy Inspectors General of Police of both the sides reached their respective locations, fighting had assumed such proportions and had become so intense that it was not possible to establish any contact with the party on the other side and the conflict went on unabated till the afternoon of 6th June, 1985 resulting in unnecessary loss of lives and property.

The Armed Clash at Merapani

3.79 According to Nagaland, a small detachment of the Nagaland Armed Police was sent to reach the Government Seed Farm to give rations and other supplies to the Nagaland Armed Police stationed there. They were spotted by an Assam Police patrol party on their way to the Government Seed Farm and were fired upon by LMG at about 1600 hrs. The said detachment of the Nagaland Armed Police was compelled to return the fire. This was followed by firing by the Assam Police post next to the Government Seed Farm. Almost simultaneously, the Assam Armed Police posted at the Assam Police Station

opposite the Nagaland Inner Line Permit Check Gate also started firing at the Nagaland Check Gate. The Nagaland Police being outnumbered at the check gate at Merapani vacated this post which was captured by Assam. However, by the morning of 5th June, 1985, the Assam Armed Police vacated their armed post next to the Government Seed Farm and also the forest check gate near the foothills. Finally, the Assam Armed Police vacated their ammunition dump and also headquarters located near the Merapani bazar on the 6th June, 1985. The cease-fire as stipulated by the Commissioners in the meeting held on 6th June at Chumukedima was brought into effect by the evening of 6th June, 1985.

3.80 Nagaland has stated that the 4th June cease-fire agreement was not implemented due to the intense firing resorted to by Assam which made the Commandant of the Nagaland Armed Police personnel unable to contact his counterpart to effect the cease-fire. The white flag shown by the Nagaland Police officers was ignored by the Assam Armed Police personnel.

3.81 To sum up, it is the case of the Nagaland Government that the Assam Government was squarely responsible for the armed conflict: that it was the Assam Police officials who had forcibly seized the fencing material at gun point from the Inner Line Permit Check Gate: that it was Assam Officers who fired at the Deputy Commissioner, Wokha when he visited the Police Station and no punishment was meted out to the culprits; that it was the Assam Government who failed to implement the simultaneous withdrawal of armed police forces from Merapani; that it was the Assam Government who set up the massive fortified Border Out Post under the garb of a forest check gate near the foothills to cow down the Nagaland authorities and it was they who had started firing near the Nagaland Seed Farm while the Commissioner-level meeting was in progress at Chumukedima.

3.82 The Government of Nagaland strongly feel that recurrence of such conflicts between the two sister States must be avoided at all costs in the interest of both the States. It is essential that the terms and conditions of the Interim Agreements and also the Imphal Agreement of 7th June, 1985 be followed in letter and spirit by the States concerned to prevent recurrence of such armed conflicts. It is also absolutely essential that without any further delay, appropriate steps be taken for re-fixation of the boundaries of the States of Assam and Nagaland as envisaged in the Nine-Point Agreement followed by the Sixteen-Point Agreement so as to have permanent peace and amity between the people of the two neighbouring States.

3.83 The position taken by the State Governments of Assam and Nagaland with respect to the subject matter of the inquiry, viz., incidents which took place in the Merapani area from April to June 1985 has been summarised in the paras above. By and large, the facts both with regard to the basic issues, namely the unresolved boundary problem, and the immediate

causes which led to the conflagration of June 1985 are generally undisputed. However, both States have their own perceptions about the boundary, why the particular event took place, how it took place, who was responsible, whether it could have been prevented and so on.

3.84 Both sides have been at pains to say that the real cause is the long standing boundary problem which has not been solved. The Nagas have for long been claiming substantial areas of Assam. These claims are accompanied by an atmosphere of tension and hostility between the Naga and non-Naga communities in the reserved forests. The result is that even after the creation of Nagaland in 1963, there has never been any real peace in the border areas and this state of affairs has been marked by incidents of varying degrees of seriousness. The June clash was actually the second occasion on which the armed police of the two States had clashed. They had done so in 1972 also.

3.85 There was then a major incident in 1979 in the reserved forests of Diphu, Rengma and Nambor where a large number of people were killed. There are then continuing instances of forcible occupation of land, unauthorised settlement in the forest areas, unauthorised felling of trees, looting, arson, murder and so on. It is the feeling of both Assam and Nagaland, therefore, that the real solution lies in the Government of India resolving the boundary problem at the earliest. In the absence of this, in spite of the various short-term measures taken like the interim agreements referred to or the frequent meetings between the two sides at various levels or the *ad hoc* intervention of the Government of India using their good offices when serious incidents occur, the problem will continue and the recurrence of incidents such as the one that took place in June 1985 cannot be ruled out.

3.86 The terms of reference set for this Commission are specific and relate only to the incident that took place in April-June 1985. This Commission is not a Boundary Commission and cannot therefore go into this basic issue. It recognises, however, that the persisting problems between the communities at the border and the two States are substantially and largely due to a lack of finality in the settlement of the border between the two. Without going into the merits of the case, it must be accepted that Nagaland have persistently laid claims to some areas of Assam. Speaking of the post-independence period alone, they made this point a number of times and at various levels. Certain assurances were also given. It is but natural for them or indeed anybody for that matter, to expect that the problem should be resolved, and at not too distant a point. The Commission would recommend accordingly.

3.87 Coming now to the subject matter of the inquiry to be made by this Commission, the position taken by the two sides above will show that there were certain definite events taking place over a period of a month or two, which finally culminated in the

actual clash of June 4—6th. It will also be clear from the narration above that both sides by and large agree as to what these events were. Briefly these would be—

(i) *The incident of 20th April*

In spite of the earlier history of Assam having opposed, some time with force, the erection of any structures or fencing at the check gate, Nagaland took up fencing of this check gate in the northern direction towards Merapani bazar on the 20th April. This was stopped by the Assam authorities and the fencing material seized by them the same day.

(ii) *Incident of 22nd April*

Deputy Commissioner, Wokha came to the Nagaland check gate and then accompanied by some of his officers went into the Merapani Police Station of Assam to enquire about the seized material. A shot was fired by an Assam Police personnel stationed at the Police Station, it would appear, in the direction of Deputy Commissioner, Wokha, whether accidentally or otherwise.

(iii) *1st May Agreement*

An agreement was arrived at between the senior Police Officers of both States for withdrawal of armed police which had been inducted by both sides in the area. This was unfortunately not implemented.

(iv) *The Assam Check Gate established on 26th May, 1985*

Action taken by Assam in reinforcing their armed police in the Merapani area by deploying three Assam Police Coys and in setting up a Check Gate described as a Forest Check Gate on the Golaghat-Wokha road, thus imposing a barrier on free movement of Naga officials and the Naga public.

(v) *The Nagaland decisions of 28th May, 1985*

The Nagaland reaction to this Assam Check Gate in sending reinforcements of Nagaland Armed Police. More than three Coys of Nagaland Armed Police arrived in the Merapani areas by the next day under the command of Deputy Inspector General, Nagaland Armed Police.

(vi) *Failure of the Chumukedima meeting*

The long awaited Commissioner level meeting with the Central Observer was held on the 3rd and 4th of June to defuse tension and restore normalcy. It apparently failed to do so and fighting started while it was in session.

3.88 The succeeding chapters will firstly, examine the relevant provisions of the interim agreement of 2nd May, 1985 of which the central figure in this whole episode, the Nagaland Inner Line Permit Check Gate at Merapani, was the product, and secondly, examine each of the events outlined above in detail and see whether and to what extent the conflict and the resultant loss of human lives and damage to property could have been averted. The chapters thereafter will go into the other terms of reference.

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CHAPTER IV

THE INTERIM AGREEMENTS OF 1972—THE INNER LINE PERMIT CHECK GATE

4.1 While no long-term solution of the boundary problem could be found on the basis of the Sundaram Report, his labours did result in the signing of four Interim Agreements which would regulate the conduct of the two Governments in the border areas. These agreements were to remain in force till Shri Sundaram had submitted his main recommendations to the Government of India. He did so in 1974. However, the two Governments continue to stand by these agreements which are therefore, still in force.

4.2 The Interim Agreements are described as follows in Shri Sundaram's Report :

"At the beginning of this report I have given a brief account of the genesis of Nagaland's claims and how it gradually developed into a dispute. While the representatives of the Nagas who negotiated with the Central Government the details pertaining to the formation of the Nagaland State were not fully satisfied with its boundaries as proposed by the latter, they were not left in any doubt that any future alteration of these boundaries would have to be effected under Articles 3 and 4 of the Constitution. The boundary between Nagaland and Sibsagar district was clearly defined in the Notification of 1925. Since for the most part it was the same as the southern or eastern boundaries of the ten reserved forests fringing the border, there was no real difficulty in determining them on the ground. But Nagaland encroachments on these forests which had started during the period of hostile Naga activities kept on increasing over the years. In places, such encroachments were even official, for example, the Government Agricultural Farm in Merapani area of Doyang reserve, construction of a road connecting this area with the Panikheti area of Kakadanga and the putting up of Government buildings in Naintola area near Taukok river.

Assam's efforts to prevent and remove encroachments on their reserved forests with the help of armed police forces met with resistance and led to their confrontation with the armed police of Nagaland. In March 1972, this took a particularly violent turn in Geleki Reserve with the two forces firing at each other and causing casualties. At that stage there were nearly 20 armed police posts of Nagaland in or near the

Sibsagar reserved forests and more than 30 of Assam located at short distances from them. This deplorable situation was fortunately brought to an end by four Interim Agreements between the two State Governments. Two of them were signed by the Chief Secretaries on 31-3-1972 at Shillong, the 3rd on 2-5-1972 at Kohima and the 4th on 23-5-1972 at Shillong.

These four agreements between them covered the boundary between Assam and Nagaland from the Taukok river to the Doyang river. No similar agreement was considered necessary in regard to the boundary further south between the two States since there was comparatively less trouble and tension in the Rengma, Nambore and Diphu Reserves. All the agreements were called the Interim Agreements and recited the fact that the Adviser was currently examining the boundary problem and expected to make his recommendations in the near future and that it was desirable that in the meantime peace and tranquility should be maintained. The Governments agreed to withdraw all the armed police posts to some distance away from the boundary and the reserved forests and not to set up any such posts thereafter in the area. The Assam Government agreed as a provisional and temporary measure to the Nagaland Government continuing its civil police check posts each manned by not more than 7 policemen, for enforcing the Nagaland Security Regulation at (i) 8th mile from Amguri Railway station; (ii) Tijut, south of Namsoi Nadi on the Sorarimon road; (iii) Tjutapela near new Sonowal on the Mariani-Mokokchung road and (iv) the Animal Husbandry Colony on the Golaghat-Wokha road. They also agreed that the reserved forests of Abhoypur, Geleki, Tiru Hill, Disoi, Disai valley and Doyang shall continue to be reserved forests and maintained as such, and no settlement of villagers and no encroachments will be allowed. They further agreed not to enter into fresh leases or contracts for the working of the forests during the continuance of the Interim Agreements. For their part, the Nagaland Government agreed not to interfere with the normal maintenance and working of the reserved forests and not to undertake any survey or construction of road or of other structures in these reserved forests.

In regard to Geleki, however, the Assam Government agreed to Nagaland widening and realigning at its expense that part of the Amguri-Tuli road which lies within the reserve since this was necessary for the development of the Tuli Paper and Pulp Project already under way. The Kakadanga area which had ceased to be a reserved forest was also treated as an exception in the Interim Agreement of 23-5-1972. The Assam Government agreed (i) that such areas near the border in the Kakadanga forest as were previously under cultivation by the villagers of Yimpang, Champang, old Tsori and new Tsori would be allowed to remain under their cultivation, (ii) land already under occupation of the Nagas wherever they may be, shall not be disturbed and (iii) plots in the area not already allotted will not be allotted during the continuance of the Interim Agreement."

4.3 The Merapani area is covered under the 3rd Interim Agreement dated the 2nd May, 1972 which deals with the boundary between Assam and Nagaland from Disoi river to Gororjan stream and from Kakadanga river to Doyang river.

The Interim Agreement of 2nd May, 1972

4.4 It is clear from the preamble that—

- (i) the Adviser was examining the boundary problem and expected to make his recommendations in the near future.
- (ii) it was desirable that in the meantime peace and tranquillity should be maintained along the border between the States of Assam and Nagaland from Disoi river to Gororjan stream and Kakadanga river to Doyang river.
- (iii) Governments of Assam and Nagaland agreed to the provisions that followed without prejudice to their respective claims in regard to the location of the Assam-Nagaland boundary.

4.5 Under clause 1 of the agreement all armed police posts set up or near the border between the two States were to be withdrawn within one week by the two Governments.

4.6 In clause 2, the Governments agreed not to set up any armed police posts within the reserved forest or within a belt on the said border to be determined by the Inspectors General of Police of the two States. These two clauses imposed obligations and prohibitions on both the Governments as regards armed police posts.

4.7 In clause 3, the Assam Government agreed as a purely provisional and temporary measure to the Nagaland Government continuing its civil police check gate near the Animal Husbandry Colony on the Gola-

ghat-Wokha road to be manned by not more than 7 police personnel for the purpose of enforcing the Nagaland Security Regulation, 1962 to control the access of unauthorised persons into Nagaland. Under this clause, the Nagaland Government were allowed to continue their Inner Line Permit Check Gate as a purely provisional and temporary measure. Further, it was to be manned by not more than 7 police personnel and the function to be performed was to control the access of unauthorised persons into Nagaland. This check gate is the central figure in all the events that took place during March to June, 1985. How this particular provision is to be read or was read by the field functionaries and other officers of the two Governments or what would be its strict legal interpretation is, therefore, extremely important.

4.8 Under clause 4, the Nagaland Government agreed not to prevent or restrict the entry at this check gate of Assam Government officers, contractors and other persons authorised by the Assam Government in carrying out their normal functions and duties. No other civil police check gate or post was to be set up by Nagaland on the Golaghat-Wokha road.

4.9 Under clause 5, the Assam Government was to continue and maintain the Disoi valley and the Doyang reserved forests as such and no settlement of villagers and no encroachments were to be allowed by it. In dealing with encroachments, the Assam Government was to enforce a uniform policy irrespective of the area or State to which the encroacher belonged. The Assam Government at the same time agreed that Nagaland settlements in the Disoi valley reserved forest existing on the date of the agreement would not be disturbed.

4.10 Under clause 6, the Nagaland Government agreed not to interfere with or obstruct in any way the forest officials and contractors of the Assam Government in the performance of their functions in these reserved forests or in the normal maintenance and working of these forests under such agreements or contracts already entered into by the Assam Forest Department. The Assam Government was to furnish within 15 days to the Nagaland Government a full and complete list of leases and contracts already entered into in respect of these forests. Assam Government also agreed not to enter into any fresh leases or contracts in respect of these forests during the continuance of the agreement.

4.11 Under clause 7, the Nagaland Government agreed not to undertake any survey or construction of road or of other structures in either of these reserved forests.

4.12 Under the last clause of this agreement, clause 8, the Nagaland Government agreed not to interfere with or obstruct the working of the Tea Gardens on the border between the two States by the Tea Companies under their respective existing grants and leases.

Interpretation of the 2nd May Interim Agreement by the two sides

4.13 Although, as will be seen later, there have been accusations and counter-accusations by the two sides that these Interim Agreements have been contravened, the fact remains that they did serve as a yardstick or as a kind of charter to which both sides were in theory committed. It is, therefore, important to see how these agreements, or more particularly, the 2nd May agreement which the present inquiry is concerned with were read and interpreted by Assam and Nagaland.

4.14 In the mass of evidence that has come before the Commission and then the manner in which these points have been argued before the Commission, it would appear that it is on the following that the two sides have their own ideas of what the agreement says or requires them to do—

- (i) The duration of the agreement.
- (ii) The implications of the agreement in so far as the present boundary is concerned i.e. the 1925 Notification.
- (iii) Whether the phrase "continuing its civil police check gate near the Animal Husbandry Colony on the Golaghat-Wokha road..." in Sub-clause 1 of clause 3 of this Interim Agreement implies maintenance of any structures that might have existed at the time of the signing of the agreement by way of repairs, reconstruction, new construction, fencing etc.
- (iv) Whether the civil police check gate continued as long as the Interim Agreement was in force.
- (v) Since in terms of clause 5, the Assam Government agreed that the Doyang reserved forest would continue to be a reserved forest and maintained as such, no new police post could be set up.

Duration of the Agreement

4.15 On the first point namely, the duration of the agreement, a plain reading will show that the intention at the time that the agreement was executed was certainly that it was to subsist for a limited length of time. This in fact should be implicit from the title of the agreement itself which is "Interim Agreement". Secondly, the preamble clearly refers to the fact of the Adviser being engaged in the task of examining the boundary problem and his expecting to make his recommendations *in the near future; and that in the meantime* peace and tranquility was required to be maintained and hence the agreement. The operative phrase here would be "*expected to make his recommendations in the near future and in the meantime*". It follows therefore, that as far as the wording of the agreement is concerned, it would come to an end with the making of the recommendations by the Adviser or

in other words the submission of his report to the Government of India. The stand of the Nagaland Government is that the agreement would remain in force till the boundary problem was actually solved. On what grounds this stand is based has not been indicated by the State. As far as Assam is concerned it has been argued before the Commission that the agreement ends when Shri Sundaram submitted his report which seems to be in agreement with a plain reading of the agreement.

4.16 However, for purposes of dealing with this enquiry, what is the correct interpretation of this point becomes irrelevant since Assam themselves have been repeatedly on record affirming and reaffirming their continued adherence to the agreement. In fact, both Nagaland and Assam have over the last 13 or 14 years by and large quoted this agreement as a kind of Bible and have always measured the other side's actions in relation to the provisions of the agreement. Many of their witnesses who appeared before the Commission for oral evidence confirmed that the Government of Assam's view right through was that these agreements continued till the boundary issue was solved. The stand taken by Assam at this time is under the circumstances irrelevant and cannot nullify the earlier repeated assertions of support.

Implications of the Agreement as to 1925 Notification

4.17 On the second issue, the Nagaland position is that after the signing of the interim agreement, the 1925 Notification lost its relevance. In other words, the position of Assam in so far as the disputed areas are concerned was no better than that of Nagaland. The conduct of the two States in these disputed areas was to be strictly regulated in terms of the provisions of the agreement and, therefore, to say that Assam had any special position in these areas because under the present constitutional boundary the area was in Assam was wrong. The following extracts from two letters of the Chief Minister of Nagaland to the Prime Minister and Home Minister, Government of India, in 1979 and 1981 are significant and reflect the attitude at the highest level of the Nagaland Government on this point :—

"Therefore, it is to be pointed out here that the Nagaland Government is strictly following terms of Agreements reached between the two Governments, in the year 1972. Hence, the question of following the constitutional boundary as mentioned in your letter does not arise".

"The field functionaries of the Government of Assam have of late been quoting chapter and verse from the Constitution in justification of their jurisdictional authority in the disputed areas. To us, this appears to be a belated attempt on the part of Assam to wriggle out of the terms and conditions of the Interim Agreements entered into between the two States in March, 1972 and re-affirmed by the then Chief Ministers of

both the States in their meetings held on 2-1-1979 at Kohima and 28-1-1979 in Shillong....”.

4.18 This is naturally not the position taken by Assam who continue to refer to the fact that under the existing constitutional boundary, these areas no matter how powerfully claimed by Nagaland continue to be part of the State of Assam. The fact that Assam had agreed to certain obligations and prohibitions in these areas imposed by these agreements does not take away that fact. The boundaries of the different States are given in the Constitution. If the constitutional boundary of Assam with Nagaland at present resulted from the 1925 Notification, no agreement interim or otherwise can bring about any change in that position. Such change can only be brought about under the procedures prescribed in the Constitution itself. The interim agreements were at best a working arrangement under which certain obligations and disabilities were accepted by Assam. If the Assam Government agreed that a particular reserved forest would continue to be maintained as such by them, this did not mean that this forest was no longer in the State of Assam or that Nagaland acquired the same position as that of Assam.

4.19 There can be no doubt that till steps are taken under the provisions of Articles 3 & 4 of the Constitution to redraw the boundaries between Assam and Nagaland, Assam have the right, and in fact a duty cast on them, to administer and exercise jurisdiction over territories presently constituting the State of Assam. No interim agreement entered into between the two States can change this position or give any special or parallel rights in these areas to the State of Nagaland.

4.20 However, here again one has to go by the actions and behaviour of the two sides in the areas covered by the agreement rather than what in strict legal terms would be the position. In a way, the constitutional boundary becomes really of academic interest because over the years, quite obviously in the interest of maintenance of peace and tranquillity, Assam certainly seem to have agreed to a number of stipulations which imply surrendering or abdication of their constitutional responsibilities in the disputed areas. For example, it seems that some people, obviously the Nagas living within the constitutional boundaries of Assam were at one time allowed to vote in the General Elections for people standing for election in Nagaland. A rather peculiar position in the disputed area was also allowed to exist under which on the committal of an offence under the Indian Penal Code, if the accused was a Naga, the case would be registered in a police station in Nagaland. How and under what authority this was done is not clear nor is it known what was the eventual fate of investigation of such cases and prosecution in Nagaland courts. There are instances of permits being issued by the Nagaland authorities for felling of trees in forest areas within Assam. On one occasion, the Deputy Commissioner, Kohima imposed curfew in areas of Assam. On a lower key, there are other examples where the

objective of mutual adjustments and maintenance of peace could probably justify the attitudes of the two sides. For example, search and arrest of Naga inhabitants in Assam were to be in the presence of Nagaland magistrates. Assam was to inform Nagaland when undertaking eviction operations. Assam police personnel in Border Outposts were to move in civil dress in Naga villages and so on.

4.21 In examining various issues that arise in the course of this inquiry, therefore, it will be necessary to see the behaviour and actions of the two sides not only on the basis of the constitutional boundary but on the basis of the obligations and prohibitions accepted and working decisions taken at various meetings etc. by the two sides.

Inner Line Permit Check Gate

4.22 The issue at (iii) arises out of Sub-clause (i) of Clause 3 in which the Assam Government agreed as a purely provisional and temporary measure to the Nagaland Government continuing its civil police check gate near the Animal Husbandry Colony on the Golaghat-Wokha road to be manned by not more than 7 police personnel for the purpose of enforcing the Nagaland Security Regulation to control the access of unauthorised persons into Nagaland. Before discussing the point whether this Clause authorises Nagaland to reconstruct, repair etc., it is necessary to get certain point(s) made by one party or the other out of the way. It is also necessary to get some idea of the history of this check gate.

4.23 The first thing to be clear about with reference to this Merapani check gate is whether it is in Assam or in Nagaland. It should be obvious from the language used in Clause 3.1 of the agreement that the check gate is clearly recognised as being within Assam. Only then would it be within the power of the Assam Government to “agree to Nagaland continuing with this check gate”. Otherwise, Assam would have no *locus standi* to permit or not to permit such continuance. Off and on, however, it has been contended by Nagaland that the boundary has not been clearly demarcated in the area and that it is not possible to say whether even according to the 1925 Notification, Merapani and therefore the check gate lie within Assam. It is not clear how serious Nagaland are in making such assertions. Firstly, they themselves seem to have recognised Assam’s authority in the area because of the wording of Clause 3.1 and secondly, the assertions stem from their rather emotional rejection of the 1925 Notification. Whether the 1925 Notification needs to be amended to bring any Assam areas into Nagaland is of course a separate issue and will need to be looked into by a Boundary Commission or some other agency as considered fit. Pending this, however, strong emotions cannot dilute the patent fact that the 1925 boundary is clear and there is no serious difficulty in recognising where Merapani lies.

4.24 The origin of this check gate is also important for a proper appreciation of the attitude of the two States in this matter. During the insurgency, the Dogra

and Sikh Regiments of the Indian army operated in Merapani and the adjoining areas. Some land in the forest villages was taken away by these units for establishment of their camps. Some hutments with thatched roof of kaccha bamboo walls in a school and Public Works Department building in Merapani were apparently occupied. After the army units left the Assam Rifles were here for some time. This place was then taken over by the Nagaland Government sometime towards the end of 1962 and a civil police check gate was established by them here. According to a report—Annexure A114 of A XII—of the Deputy Commissioner, Sibsagar of 22nd August, 1964, who apparently visited the site, the main function of this check post as indicated by the Naga police was that they were to check the ingoing traffic from Sibsagar border into Nagaland and to see that unauthorised persons or contraband goods prohibited under the Nagaland Security Act did not enter Nagaland through this road. He was told that this check gate was established under the authority of the Deputy Commissioner, Mokokchung. Some buildings had been constructed, the last being a Veterinary Rest House constructed on the orders of the Assistant Commissioner, Wokha.

4.25 The establishment of this check gate in Assam was objected to by the Assam Government. There was a meeting on the 23rd of September, 1964, between the Deputy Commissioners of Mokokchung and Sibsagar—Annexure A 117 of A XII. For Nagaland, it was stated that the outpost was located in the Merapani area purely for security reasons and that the Nagaland police were not authorised to exercise jurisdiction in the area which fell outside the Nagaland boundary which was clearly marked in the map. Their primary role was to keep watch on people who entered or came out of Nagaland.

4.26 The matter seems to have been considered further at Government level and there was a communication of 26-11-1964—Annexure A 118 of A XII—from the Home Secretary of Nagaland to the Chief Secretary, Assam confirming that the police and veterinary check post at Merapani was established purely for security reasons and that the Nagaland police were not authorised to exercise any power as the area fell outside Nagaland. It was requested that the continuance of this post at Merapani might be allowed till normalcy returned. In December, 1964, the Assam Government through cipher telegram of 7-12-1964—Annexure A 119 of A XII—agreed to the continuance of this post for the specific and limited purpose as indicated in the Nagaland Home Secretary's letter saying at the same time that token rent for such use of Assam land would be charged.

4.27 On 18th May, 1965, Deputy Commissioner, Sibsagar on the basis of a report that Nagaland had erected a signboard inscribed "Merapani check post Nagaland" asked Deputy Commissioner, Mokokchung—Annexure A 122 of A XII—for removal of the signboard as also the shifting of the police post itself from Assam Merapani to Nagaland.

4.28 On 7th June, 1965, the Chief Secretary, Nagaland wrote—Annexure A 124 of A XII—to the Chief Secretary, Assam and had this to say about the Merapani check gate :—

"According to another report, the Chief Conservator of Forests and the Divisional Forest Officer, Jorhat, alongwith some personnel of IV Assam Police Battalion went to Merapani and forcibly removed the police check post gate and took away the signboards etc. put up by the Government of Nagaland. They also threatened to arrest the Check Post police official. In this connection, I would request you to kindly refer to our letter No. CON 20/61, dated 26 November, 1964, wherein we had requested the Assam Government to allow us to retain the Merapani check post till normalcy returns. I will, therefore, be grateful if you kindly look into the matter and issue necessary instructions to all concerned to refrain from such undesirable action which may lead to unnecessary misunderstanding between the two State Governments."

4.29 The following is an extract of the reply—Annexure A 125 of A XII—of Chief Secretary, Assam dated 22nd June, 1965 :—

"Meanwhile, I would further like to emphasise that—

- (a) we cannot allow any unauthorised encroachment into our area by people from Nagaland.
- (b) any signposts put up in our State area by the Nagaland authorities without our permission would have to be removed.
- (c) no cultivation or jhumming or taking forest produce from our area can be permitted.
- (d) we certainly do not wish to aggravate the situation but our territorial integrity has to be respected; the Nagaland Government should restrain their people from encroaching in our areas.
- (e) in regard to Merapani check post, we agree to the extent that we have already indicated in my cipher telegram of 7-12-1964 to which no reply has been received from you. No suggestion that the area is in Nagaland or such impression can be entertained. Recent reports also indicate that Nagaland authorities have made more constructions in this area without even informing us. All unauthorised structures raised by Nagaland authorities in this area shall have to be removed.

It is our earnest endeavour to have the very best relationship with the administration and people of Nagaland. Our administration will not do anything against the administration or people of Nagaland, but our

territorial integrity would have to be respected. While I can assure you of the co-operation of our administration in all lawful activities, we hope that restraint will equally be exercised by your administration and no encouragement will be afforded to those who may wish to carry out illegal activities."

4.30 The Deputy Commissioner, Sibsagar in a communication to his Government on 20th July, 1965—Annexure A 126 of A XII—reported as follows about the Merapani check post of Nagaland :—

"With regard to the police check post set up by the Nagaland Government at Merapani, the signboard put up by the O/C clearly purported to show that Merapani area was in Nagaland and not in Assam and as such an impression was likely to be created in the minds of Nagas passing along the way and this may induce them to commit such acts that are not permissible within the Forest Reserve area of Assam. As such it was considered desirable to remove the same and was therefore removed by the Divisional Forest Officer, Sibsagar. The matter was also officially taken up by me with the Deputy Commissioner, Mokokchung when I first received a report of putting the signboard but with no result. From the report I received from time to time both from the Forest officials and the Merapani B. O. P., it appears that the Assistant Commissioner at Wokha is actively behind this illegal activity of Nagas at Merapani both officials and non-officials and I understand also that he has some personal interest in this area. ... I would suggest that we should demand immediate removal of the police check post set up by the Nagaland Government in Merapani while we may allow other Nagaland officials to remain temporarily for the time being. Unless this is done, I am afraid we shall continue to have similar trouble which may later develop into more serious trouble with the result that we may have to take stringent measures under the provisions of the law which may further complicate the whole issue."

4.31 There was a discussion between the Chief Secretaries of Assam and Nagaland on 11th February, 1966 and the following extract of a note—Annexure A 133(i) of A XII—recorded by the Chief Secretary, Assam is relevant :—

"As the Chief Secretary, Nagaland, was in Shillong, I took the opportunity of meeting him and discussing with him matters of mutual concern. The following matters were discussed :—

- (i) I indicated that check posts and the like had been raised by the Nagaland Government well within Assam and no permission had been taken from us. The Chief Secretary, Nagaland, agreed that the posts were inside Assam and that he would seek *ex post facto*

sanction for them being where they are. He has further agreed that for any structure and the like sought to be raised, this would only be done with specific intimation to and permission of the Assam Government.

(ii)

- (iii) I mentioned that because of the existence of Nagaland check posts well within Assam proper it would be extremely wrong if such check posts challenged and stopped our officials from going on with their normal work and duties inside Assam. This had happened even in the case of the Chief Conservator of Forests, Assam, on one occasion. The Chief Secretary, Nagaland suggested that they certainly did not wish to interfere with Assam Government officials and others not going to Nagaland and whether it would be possible for the officials concerned to carry some kind of identity papers. I regretted I could not accept the question of issuing identity papers to my own officers going about their duties inside Assam and being in a position to seek permission from officers of another Administration to do so. In these circumstances it was felt that the best would be to have joint police so that the people going about their business in Assam territory could be cleared by the Assam police and the Nagaland police would confine their activities to persons of Nagaland or for one entering into Nagaland..."

4.32 The Chief Secretary, Assam on 24th February, 1966, in a message—Annexure A 134 of A XII—to the Chief Secretary, Nagaland reminded him of these discussions and requested him to send a formal request for retention of amongst other things the police check gate with signboard, veterinary check post with signboard, P.W.D. godown, forest beat office—all in Merapani where they were.

4.33 The Chief Secretary, Assam received a report dated 16-8-1966—Annexure A 136 of A XII—from the Chief Conservator of Forests reproducing a report sent by Divisional Forest Officer, Sibsagar to Deputy Commissioner, Sibsagar as below :—

"It has been reported by the Range Officer, Golaghat Range, that he has received information about the proposed construction of a building by the Nagaland Government at a site situated almost opposite to the existing B.O.P. at Merapani and by the side of the Animal check post at Merapani constructed by the Nagaland Government in the past and about which report was submitted to you *vide* this office Memo No. B/13674/53 dated 6-10-1965. The proposed site is well inside the Doyang reserved forests. For the purpose of construction, building materials like timber and sand have already been dumped at the site. It appeared from information received that the proposed

building is going to be used as Agriculture Office. As no permission appears to have been given by the Government of Assam to the Nagaland Government for taking up any such construction inside the State forests areas; so this action of the Nagaland Government is against the contents of the Government letter No. PLE. 43/63/303 dated 25-2-1966. Kindly intimate if any permission has been received by you from the Government. In case no such Government permission has been received, I would request you to kindly to take up the matter with the Deputy Commissioner, Mokochung, Nagaland directing him not to proceed with the proposed construction."

4.34 The forest authorities were informed through a letter of 5th August, 1966, that the construction would be unauthorised and would constitute an encroachment into the Doyang reserved forest. It should be treated as any other encroachment and the building materials seized. Simultaneously the Chief Secretary, Assam in a D.O. letter of 27th August, 1966,—Annexure A139 of A XII—to the Chief Secretary, Nagaland brought up this matter. He said that there were reports that the Nagaland Government were making arrangements for constructing a building at a site situated almost opposite the existing Border Outpost at Merapani by the side of Animal check post set up by the Nagaland Government. He drew the attention of the Nagaland Chief Secretary to the Shillong discussions in February, 1966, where he had been assured that in future any structures sought to be raised would be after specific permission of the Assam Government. He requested that the matter might be looked into and instructions issued not to proceed with the proposed construction. Local officers in Assam were meanwhile instructed not to allow any such unauthorised construction anywhere inside Assam without specific and prior permission. Chief Secretary, Nagaland was also requested to intimate the action taken and if there was no objection to enclose a copy of the instructions issued by him.

4.35 In September, 1966, the building materials such as timber and C.I. sheets connected with the construction of these buildings at Merapani were seized and brought to the range headquarters of the Forest Department at Golaghat. At this stage, the Chief Secretary, Nagaland seems to have spoken to the Chief Secretary, Assam over the telephone. As a result, the Assam Government directed its Forest Department to drop the case against the contractor concerned and compound it after realisation of the necessary fine. The seized building material was to be released. The Nagaland Government were again reminded about the need for taking permission from the Assam authorities for any construction in the State of Assam—Annexure A143 of A XII—.

4.36 There was a long meeting between the two Chief Secretaries on the 27th and 28th June, 1967. The relevant extract of the minutes—Annexure A151 of A XII—of the meeting is as follows :—

"The Chief Secretary, Assam indicated his concern and distress at unauthorised structures

coming up within areas in Assam accepted by Nagaland administration to be so. In this connection he also referred to the check gate at Namsoi where recently the Revenue and Forest Minister, Assam had been held up for 20—25 minutes. He considered it deplorable that the Minister of the Government of Assam should be checked in his own area by another administration and prevented from proceeding to another area within Assam. The Chief Secretary, Assam thought that it was essential to formalise and honour the commitments already made by Nagaland administration in regard to any kind of structures within Assam. The Nagaland administration was at liberty to ask for acquisition of land on which the structures were located or to pay ground rent for the structures in question. The Chief Secretary, Nagaland agreed that the Nagaland police posts at Merapani and Amguri gate are in Assam according to the 1925 boundary notification. However, the structures at the posts had been in existence for a number of years. At this, Chief Secretary, Assam had referred to Nagaland Government's earlier letter No. CON 20/61 dated 26-11-1964 wherein it was stated that the areas at Merapani where the police and veterinary check posts were constructed were definitely outside Nagaland. He had also referred to the commitment made by the Chief Secretary, Nagaland earlier to apply to the Government of Assam for continuance of these posts in their existing sites."

4.37 The position that emerges from the narration above can broadly be summarised as below :—

- (i) The civil police/animal check post of Nagaland was established sometime towards the end of 1962.
- (ii) In a letter of 26th November, 1964, to the Chief Secretary, Assam the Home Secretary, Nagaland said that the police and veterinary check post at Merapani was established purely for security reasons and was only to keep watch on people entering or leaving Nagaland. The Nagaland police were not authorised to exercise any power as the area fell outside Nagaland. Permission for continuance of the police-cum-veterinary post at Merapani till normalcy returned was requested.
- (iii) The Assam Government agreed in December, 1964 to this proposal and also said that token rent for use of the land would be charged.
- (iv) On 7th June, 1965, Chief Secretary, Nagaland complained that a signboard set up at the Merapani civil police check gate had been forcibly removed by the Assam authorities and he drew the attention of the Chief

Secretary, Assam to his letter of 26th November, 1964. He wanted suitable instructions to be issued to the Assam authorities to refrain from such action.

- (v) In reply, Chief Secretary, Assam said that Nagaland had taken no action regarding payment of rent etc. as suggested earlier. He also referred to some reports received saying that the Nagaland authorities had made some constructions without even informing Assam and that all such unauthorised structures would have to be removed.
- (vi) At a meeting of the two Chief Secretaries of 11th February, 1966, the Chief Secretary, Nagaland while acknowledging that the civil police check gate was in Assam had undertaken to seek *ex post facto* sanction from Assam. Also, that if any structures etc. were to be raised this was only to be done with specific permission of the Assam Government.
- (vii) Chief Secretary, Nagaland was reminded of these discussions by Chief Secretary, Assam in a message of 24th February, 1966 and asked to send a formal request for retention of the check gate etc. where it was.
- (viii) While no request for such retention appears to have been sent, some time in the later part of 1966, some building material was gathered at the police check gate by the Nagaland police apparently for construction of a building.
- (ix) The Assam Government informed their local authorities that this construction would be unauthorised and an encroachment and should be treated as such and building material seized. Simultaneously, Chief Secretary, Assam wrote to Chief Secretary, Nagaland about this proposed construction, drew his attention to the February, 1966 discussions where an assurance had been given to him that future structures sought to be raised would be after specific permission of Assam.
- (x) The Assam authorities seized the building material in September, 1966. At this, Chief Secretary, Nagaland spoke to Chief Secretary, Assam and as a result a case against a contractor who was to make the construction was dropped. The Nagaland Government was again reminded about the need for taking permission from the Assam authorities for any construction in the State of Assam.

4.38 This in brief is the history of this civil police check gate of Nagaland in Merapani. The relevant provision in the 1972 Interim Agreement is once again reproduced below :—

“3.1 The Assam Government agrees as a purely provisional and temporary measure to Naga-

land continuing its civil police check gate near the Animal Husbandry Colony on Golaghat-Wokha road, to be manned by not more than 7 police personnel, for the purpose of enforcing the Nagaland Security Regulation, 1962 (Regulation No. 5 of 1962) to control the access of unauthorised persons into Nagaland.”

4.39 In arguments before the Commission, it has been contended on behalf of Assam that if one traces back the history of this check gate, it will be seen that no allotment of any nature of land was made by the State Government and that Nagaland are in occupation of the land illegally, without permission and as trespassers. It is also said that the land actually belongs to a forest villager by the name of Pauram Kachari. Nagaland were asked to pay rent more than once and also to approach the Government of Assam for *ex post facto* sanction for continuing the check post where it was. In spite of repeated communications and discussions in meetings this was not done by them. When the Interim Agreement was signed on the 2nd of May, 1972, the check gate was in existence. Although no payment of rent had been made by the Nagaland Government or any approach made by them to the Government of Assam for *ex post facto* sanction, on their keen desire for maintenance of peace and tranquillity, the Assam Government allowed further continuance of this check gate through Clause 3(1) of the agreement but it was made quite clear in the agreement which itself was of an interim nature that this continuance would be purely provisional and temporary and for the specific purpose indicated.

4.40 Clause 3(1) is quite clear; it refers to the function to be performed by Nagaland; how it is to be performed—i.e., by continuing the check gate manned by 7 police personnel. It says nothing beyond that. Obviously, therefore, if any structures have to be put up or any repairs etc. to be carried out, the permission of the Assam Government would be necessary. If it be argued that there is no specific mention of such permission being required, it cannot be concluded that continuance would then imply repairs or any such thing. More so, in view of the past history of the check gate. It was not wiped off with the execution of the agreement. Assam had been continuously on record stating and restating that the erection of any structures etc. could be done only after intimation to and with the permission of the Assam Government.

4.41 As against this, on behalf of Nagaland it has been argued that there was no question of Nagaland being in the Merapani check gate as trespassers or without permission. Such permission had been very much granted by the Assam Government in December, 1964, through the telegraphic message contained at—Annexure A119 of A XII—.

4.42 This grant of permission was reiterated on 22nd June, 1965. Further, that while it is true that in one or two of the messages there is reference to the question of payment of rent and at one stage

Assam wanted that Nagaland should formally apply for sanction of all Nagaland posts in Assam, these questions were not pursued further and appear to have been dropped. After the grant of permission on 7-12-1964, Nagaland could not be said to be trespassers although it might be that all the points relating to its occupation were not fully settled.

4.43 This apart, the 1972 Interim Agreement expressly permits Nagaland to continue the check gate and in view of this it is futile to contend that Nagaland was a trespasser. Once permission was given and once Assam allowed the continuance of the check gate, the occupation of the site by Nagaland becomes legal. The position regarding continuance of the check gate was now to be appreciated and judged on the basis of Clause 3(1) and the earlier happenings had no relevance after execution of the 1972 agreement. It would be wrong to interpret these provisions of the agreement in the light of the various messages exchanged between the two States between 1963 and 1966. The 1972 Interim Agreement executed at the highest level superseded all arrangements arrived at earlier from time to time. The only legally permissible interpretation of the 1972 agreement is to interpret the language of the agreement and if there is some ambiguity, to interpret the language in the light of the evidence of how the parties to the agreement understood it. It would be against all principles of interpretation to qualify the obligations or language of subsequent agreements by referring to messages which had been exchanged between the parties long before the agreement and which were obviously superseded by the subsequent agreement.

4.44 It is, therefore, only the agreement and more specifically Clause 3(1) which is relevant. This permits continuation of the check gate. According to the Nagaland argument it is implicit that this would mean that if the check gate becomes dilapidated, it would be open to Nagaland to repair or replace the dilapidated structure. If they could not do so they would be unable to continue the check gate. Therefore, the agreement itself clearly permits Nagaland to make construction on the existing site.

4.45 There are two main issues that arise :—

- (i) Whether Nagaland was a trespasser or had the right to maintain this check gate where it was at Merapani.
- (ii) Does the continuance of the check gate permitted under Clause 3(1) imply its continuance in proper shape and condition, i.e., is it open to Nagaland to carry out repairs, make reconstruction or new construction without having to secure any permission from the Assam Government.

4.46 Regarding the first point, it is quite clear that in late 1962 or early 1963, the Nagaland Government encroached into this particular area within the territorial boundaries of Assam and established this check gate. It was without any authorisation from the Assam Government. This occupation was, there-

fore, illegal and an encroachment. The brief history over the period of three or four years from 1963 to 1967 given above shows that at no time had the Assam Government given any unqualified or unconditional approval to the retention and continuance of this check gate. It was stated more than once that token rent would have to be paid and that the Nagaland Government should formally approach the Assam Government for *ex post facto* sanction to the continuance of the check gate where it was at Merapani. The fact that this was not done does not mean that Nagaland secured some kind of adverse rightful occupation. Assam can certainly be accused of sleeping over matters particularly after 1967. But such lethargy or carelessness cannot result in any legal sanction which would otherwise not exist. Perhaps the word trespasser would be a bit extreme but it would certainly be correct to say that Nagaland were maintaining this check gate in Assam territory without complying with the conditions set by the Assam Government and its continuance was, therefore, without valid authorisation.

4.47 It is correct that there is a specific provision in the Interim Agreement expressly permitting Nagaland to continue the check gate. It would also be correct to say that the only legally permissible interpretation of the 1972 Agreement is to interpret the language of the agreement and if there is any ambiguity in interpreting the language, in the light of the evidence as to how the parties to the agreement understood it.

4.48 There are, however, several issues involved in this contention. Firstly, is the clause specific enough so that there can be a clear cut and unambiguous legal interpretation of it? Clearly, it is not. There is nothing mentioned about the location of the check gate; the area or description of the land which constitutes the check gate; there is no description of any structures that were in existence at the time; there is no allotment nor are there any conditions of allotment indicated or stipulated. As a matter of fact, the only thing which is specifically mentioned is that the agreement of the Assam Government to this continuance is a purely provisional and temporary measure. It must also be remembered that Clause 3(1) is itself part of an interim agreement and then there is this further specific provision namely, purely provisional and temporary. This would mean that depending on the judgement of Assam it could be revoked at any time even during the pendency of the agreement. Whether such a thing was desirable looking to the basic objective of the agreement namely, maintenance of peace and tranquillity would of course be appropriately gone into by the Assam Government, but that does not take away its right to terminate the continuance of the check gate at any time.

4.49 Then again, if one is to go by strict legal interpretation, then this approach will apply to other issues in the agreement also. For example, as has been indicated earlier, quite obviously the agreement came to an end the moment Shri Sundaram made his recommendations to the Government. This is the strict legal interpretation. The fact that the two

Chief Ministers and other senior officers have been repeatedly advocating scrupulous adherence in letter and spirit to this agreement is irrelevant in the legal sense. Unless the two Governments draw up a document making an express provision for the continuance of this agreement and execute it, there is no legal validity in any of the provisions of this agreement after 1974 when the Sundaram recommendations were made.

4.50 All this apart, what really has to be seen is the basic objective of the agreement, namely, the maintenance of peace and tranquillity. The two States have been conscious of this and by and large not adopted a totally doctrinaire approach to the interpretation of the agreement. In this broader sense, the past history of the attitude of not only Assam but also Nagaland cannot be ignored. Therefore, the position would seem to be that while Nagaland are not encroachers in so far as the check gate is concerned, they are certainly there on a purely provisional and temporary basis with all that the term implies.

4.51 The other point is what exactly does continuance means. Here again, one must be careful to distinguish between legal interpretation and the broader interpretation in the context of the earlier stand taken by the two Governments in this matter. Going only by the strictly legal interpretation of Clause 3(1) "continuing its civil police check gate" would mean continuing with the function that was being performed at this check gate, namely, enforcing the Nagaland Security Regulation, 1962. The phrase would seem to cover nothing beyond that. It could well be argued in this line of reasoning that the land and structures continued to be the absolute property of the State of Assam. Therefore, let alone new construction, even maintenance by way of repairs would be by Assam.

4.52 A somewhat more practical interpretation would be that after all this function was being performed on a given piece of land or structure or something of that nature. Therefore, continuing to perform this function would mean the continuing of the necessary wherewithal for such performance. In other words, the thatched huts or other structure that were in existence at the time that the agreement was executed. It would also mean that Nagaland could carry out repairs of these structures. It could also be accepted that if any part of these structures collapsed or became in some other manner unuseable, Nagaland could go ahead and reconstruct these structures. The reconstructed structures would have to be exactly the same as the one that they replaced. It will not be possible to accept the contention that the term "continuing" will imply an automatic authority for the Nagaland Government to put up new structures or make any additions or even alterations in the existing structures. For that, it will be necessary for them to approach the Assam Government for necessary permission and authorisation.

4.53 Leaving legal semantics apart, this indeed seems to have been very largely the position also.

Reference may be made here to the very large number of meetings at which this matter of repairs or fresh structures or fencing was discussed between the two sides, particularly after 1979 when there was another attempt by the Nagaland authorities to make some constructions at this check gate. Like on the earlier occasion in 1966, the building material was again seized by the Assam authorities and the matter had to be ultimately settled by intervention at higher levels. The meeting of Commissioners of 21st March, 1979, discussed the matter as follows—A VII—

"The question of construction of some buildings with tubular steel structures at the temporary Civil Police Check Gate near Merapani by Nagaland administration came up for discussion. It was stated by the Nagaland side that the buildings were meant for providing accommodation to Civil Police personnel and the staff of the Animal Husbandry Farm. From the Assam side it was stated that the land where the construction had been started was patta land of a forest villager which was alleged to have been forcibly occupied for the above purpose. It was pointed out from the Assam side that the proposed construction of steel structures was too big for the above purpose. Further, after the seizure of the building materials, the construction was going on under the protection of Nagaland Armed Police creating tension in the area. The Nagaland side pointed out that before seizure of the building materials, the matter could have been discussed between the Deputy Commissioners of both the States and amicably settled. To defuse tension in the area it is agreed that the following measures would be taken immediately :—

1. The Deputy Commissioner, Wokha and the Deputy Commissioner, Sibsagar will meet on 22-3-1979 at Merapani, make a joint enquiry and ascertain whether the land where the construction had been started is patta land of an individual. They should also recommend what measures should be taken for restoration of normalcy in the area.
2. The Assam administration will return the seized materials at Merapani at the site.
3. The Nagaland administration will immediately suspend the new construction.
4. The Nagaland Armed Police posted at the construction site will be immediately withdrawn."

4.54 At a meeting of the Commissioners, Upper Assam Division, Assam and the Commissioner, Nagaland of 11th September, 1979, this matter was discussed and relevant paragraphs of the minutes in—A VII—says :—

"The DC, Wokha made a reference about the construction proposed to be undertaken by

the Nagaland Government for the civil police check gate in Merapani area to replace the dilapidated existing construction. The DC, Sibsagar drew the attention to the reference about this check gate in the interim agreement of 1972. It was decided that the DIG of Assam and the DIG of Nagaland with Commandant 3rd Assam Police Battalion would visit this area and give their recommendation about the actual minimum requirement of accommodation for police personnel."

4.56 The matter was again discussed between the cussed between the two Governments although the question that was posed by the Nagaland authorities was one of mere replacement, and according to what is now being argued on their behalf, not have been posed to the Assam authorities at all.

4.56 The matter was again discussed between the two Commissioners on the 27th September, 1979, and the relevant extract of the minutes in—A VII—is given below :—

"In regard to accommodation for personnel of Nagaland police for manning civil check post at Merapani, the two DIGs after joint inspection recommended an agreed scale of accommodation to replace the existing dilapidated structure. The DC, Sibsagar mentioned that according to D.F.O.'s report the land belonged to a private individual. As the need and scale of accommodation required for personnel was accepted, the Commissioner, Upper Assam Division was requested to examine in what way the site could be made available for the above purpose."

4.57 At this point, it will again be seen that the issue of accommodation to replace the existing dilapidated structure was being discussed between the two sides and Nagaland were not putting forward the view that no permission from Assam was necessary. The point that the land in question belonged to a private individual was also brought up at this meeting and because of this, the two sides seem to have agreed that the Commissioner, Upper Assam Division, might see how this particular site could be made available. The matter was, thereafter considered at a Commissioners meeting of 12th December, 1980 as follows :—

"DC, Wokha raised the point about the permission to be granted for construction of suitable accommodation to the personnel in the Merapani check gate. Commissioner, Upper Assam Division, mentioned the earlier discussion on this issue and apprised that Government of Assam have already made a reference to Government of Nagaland in this regard and he had also demi-officially replied to Commissioner, Nagaland. It was decided that a copy of this communication would be sent to Commissioner, Nagaland so as to take further appropriate action in the light of the reference from Government of Assam."

4.58 Thereafter, on the 14th May, 1982, at a Commissioners level meeting it was agreed that the Deputy Commissioner, Wokha will construct the Merapani check post building, the need and scale of accommodation of which was accepted on the basis of a joint report of the two Deputy Inspectors General in the co-ordination meeting held at Nowgong Circuit House on 27-9-1979. The only problem to be solved was regarding payment of rent to the Forest Department. Deputy Commissioner, Wokha stated that if rent was to be paid by the Government of Nagaland, the Government of Nagaland would be reduced to the status of a mere forest villager and this would also be in violation of the 1972 Agreement which had allowed this check gate. Commissioner, Upper Assam Division had assured the meeting that while the construction could start, the question of payment of rent would be taken up by him with the Revenue Department of Assam.

4.59 At this time therefore, both Governments had agreed to this construction. The rent matter was brought up but the Deputy Commissioner, Wokha had said that this would be in violation of the 1972 Agreement. No clear indication of the attitude of the Assam authorities about this contention is given here. It also seems that the issue of the land where construction was to be made belonging to a forest villager was not pressed. Possibly, the Assam approach at this time was that Nagaland would replace the private individual.

4.60 The Chief Secretaries also discussed this matter at their meeting on 7th June, 1978—A VII—

"The question of construction of Merapani check post building was discussed. It was pointed out that the Assam Government have already accepted the joint report of the DIGs of Police as agreed at the Commissioners level that the Nagaland authorities can go ahead in construction of the Nagaland check post building. It was explained by the Commissioner, Upper Assam Division that the present stoppage of work was due to an injunction given by a Magistrate on a petition of a villager who claimed the land to be his own. It was agreed that the Commissioner, Upper Assam Division would look into the matter, sort out the difficulties in regard to the present site and in case it was not be possible to do so, an alternate site near the present site will be allotted for the purpose of construction of the Merapani check post building by Nagaland authorities...."

4.61 Here, the accommodation which was to replace the existing dilapidated structure is being described as a check post building. It seems further that following the earlier discussion construction had been started but had to be stopped because of a court injunction on the petition of a private individual who claimed this land to be his own. The discussion at this meeting was that Commissioner, Upper Assam Division should try and sort out difficulties relating to the present site and if this could not be done an alternate

site near the existing site would be allotted to the Nagaland authorities.

4.62 The issue was again discussed at the Chief Secretaries meeting of 23rd June, 1983 when it was noted that no progress had been made in the matter of allotment of land "for the construction of a check gate at Merapani with 7 unarmed personnel." It was agreed that the two Commissioners would meet and find out a solution to the problem—A VII.

4.63 At a meeting on the 5th of August, 1983, between the two Commissioners, it was decided as follows :—

"The committee of Commissioner, Nagaland and Commissioner, Upper Assam Division also discussed about the allotment of land for construction of a check gate at Merapani with 7 unarmed personnel for Nagaland side. It was pointed out by Commissioner, Nagaland that construction for accommodation of the Nagaland police personnel had started already and quite an investment had been made for these constructions and in the context of the dispute being raised about the plot of land on which the construction had been taken up, no progress has been possible to be made. Commissioner, Upper Assam Division stated that as ascertained the plot of land has been settled with an individual as a forest villager by the Assam Forest Department. This individual has taken the matter to the court for the constructions coming up on his plot of land. Commissioner, Upper Assam Division also pointed out that the court has intervened in the meantime regarding this plot of land and proceedings under section 145 of Cr. P.C. has been started. In view of this it was suggested by the Commissioner, Upper Assam Division whether Nagaland Government was prepared to consider an alternative site for the purpose of construction of their check post buildings. The Commissioner, Nagaland submitted that the present construction was taken up on the understanding that the land is undisputed, and further that the scale of this land was also decided upon between the DIG (Eastern Range) and DIG (Border), Nagaland. In view of this, Nagaland Government is not agreeable to go in for an alternative site. He suggested that the matter be sorted out so that the construction as was taken up could be completed. However, it was agreed that the Commissioner, Upper Assam Division would look into the present stage of the proceedings and then discuss his appreciation of the proceedings with the Commissioner, Nagaland at a subsequent meeting."

4.64 This particular meeting of Commissioners had been called in pursuance of the decision of the Chief Secretaries at their meeting on 23rd June, 1983, where with regard to the Merapani check gate matter the

question of allotment of land for the construction of a check gate had been raised. This is also how the minutes of the Commissioners meeting describe the subject, i.e., allotment of land for construction of a check gate at Merapani. It seems, however, that some construction or the other had already been started at the existing site. The minutes make no mention as to how this was done when the question of allotment of an alternate site was pending consideration. Anyhow, the injunction matter was again mentioned and what had earlier been discussed and decided upon about the question of considering an alternative site was again discussed. Interestingly, although it was a decision of the Chief Secretaries to consider an alternative site, the Commissioner, Nagaland seems to have taken it upon himself to say that he was not agreeable to go in for an alternative site. The reason he advanced for this was that his understanding was that the existing land was undisputed. How this impression came to be formed is again not clear. At any rate, the decision was that the Commissioner, Upper Assam Division would look into the present stage of the injunction proceedings and then discuss the matter further with Commissioner, Nagaland.

4.65 At the meeting of 31st July, 1984, the two Commissioners decided that the matter of reconstructing all civil police check post building of Nagaland at Merapani at the existing place will be looked into by Deputy Inspector General (Eastern Range).

4.66 At the last Commissioners meeting on the 18th of January, 1985, before the Merapani conflict, this matter was again discussed and the relevant extracts of the minutes are as below—pages 219 to 222 of N V—

"After detailed discussions following decisions were taken, (5) alternative site for construction of Merapani check post building at a place 50 yards ahead from the present location towards Nagaland will be considered by the Government of Nagaland."

4.67 This somewhat detailed account of the various meetings at the level of Commissioners of Chief Secretaries has been given to underscore the point that the stand that over this period of 5 or 6 years, Nagaland did not take the stand that Assam's permission or concurrence to their taking up fencing or construction was not necessary. This subject was brought up and discussed a number of times and after the incident of March 1979, when Nagaland had attempted unilateral construction of some tubular structures, no similar attempts were made thereafter till March and April 1985. Whether, as seems to be the impression with Nagaland, Assam were deliberately delaying and stalling the construction contemplated by Nagaland on one pretext or the other, is a separate issue and certainly Nagaland were entitled to have strongly raised this point. But this long delay would not mean that Nagaland could go ahead without the agreement of Assam. In this background of continued discussions and so on, it would certainly appear that

Nagaland themselves had never at any time construed the provisions of clause 3(1) of the Interim Agreement to mean that continuance of the check gate meant their maintaining it in proper shape and repair without the concurrence of Assam.

Inner Lines Permit Check Gate coterminus with Interim Agreement.

4.68 This point at (iv) has been very largely covered under discussion above under point (iii). The phrase "provisional and temporary" means that the life of the check gate is not linked to that of the interim agreement. If it were, there was no need to say that the continuance of the check gate was a "purely provisional and temporary measure." It is under the circumstances difficult to understand the view taken by Chief Secretary, Nagaland in his appearance for evidence before the Commission when he stated that his understanding of sub-para 1 of para 3 of the 1972 Agreement was that the Inner Line Permit check gate will continue till the agreement came to an end with the settlement of the border dispute mutually acceptable to both States. He stated that this understanding of the Nagaland Government arose out of the agreement itself and from no extraneous facts. As has been observed, the agreement itself leads to the opposite conclusion. The issue, however, is of no serious consequence inasmuch as no attempt was made by Assam to advance the proposition that even during the pendency of the interim agreement, the check gate should be removed from Assam territory and taken away into Nagaland.

Setting up of new police post

4.69 The point at (v) is that under clause 5 of the Interim Agreement, the Assam Government were to see that the Doyang reserved forest continued to be a reserved forest and maintained as such. No settlement of villagers and no encroachment was to be allowed. In the circumstances, it is argued on behalf of Nagaland that no new police post could be set up in the area.

4.70 This point seems to have been made with the Assam Merapani police station in mind. It seems that the Assam police outpost located somewhere in the Merapani bazar or near about to the north of the Nagaland police check gate was upgraded to a police station and in 1983, this police station was established opposite the Nagaland police check gate a little towards the south of the check gate in the direction of Nagaland.

4.71 The location of the police station here was objected to by Nagaland soon thereafter and the point was also raised at one or two meetings subsequently. The view of the Nagaland authorities was that this constituted a violation of the Interim Agreement. It

could also be contended that it disturbed the maintenance of *status quo* inasmuch as a change was brought about in the existing state of affairs. One would not like to labour the point but it must be once again pointed out here that Nagaland genuinely and honestly believe that the disputed areas, like the Doyang reserve forest in which Merapani lies are governed by terms and conditions set forth in the Interim Agreements. While the 1925 boundary does exist it has no relevance to the Merapani area for practical purpose and the behaviour of the two sides has to be regulated quite simply by what they are required to do under the terms of the Interim Agreement of 2nd May, 1972. Nagaland further feel in this reasoning that the Assam Government has no superior right or position in the disputed area because according to the 1925 Notification the Doyang reserved forest lies within the boundary of Assam. Accordingly, the location of the Assam Merapani police station near the check gate in 1983, Nagaland saw firstly as a violation of the agreement and secondly, a disturbing of the *status quo* which had been agreed to by the two Chief Ministers in 1979.

4.72 It must, however, be remembered that the Interim Agreement does not cover every aspect of administration or governance. The fact does remain that the Doyang reserved forest is according to the 1925 Notification within the constitutional boundary of Assam. To the extent that certain obligations have been assumed or some elements of administrative authority and control shed, it can certainly be argued that Assam then are bound to honour these stipulations. However, when something is done which is not covered by these particular provisions, it cannot be said that since the area is disputed these other acts of governance should also not be performed. In other words, if it is the judgment of the administration that for proper control of law and order in the Doyang reserved forest or in the Merapani area it is necessary to maintain a regular police station rather than an outpost, nothing prevents the Assam Government from doing so. Whether they are well advised to locate the police station at a point opposite the Nagaland check gate and towards Nagaland considering the general atmosphere of the border is another matter but it cannot call in question their authority to do so.

4.73 All this, however, again becomes academic because the Assam authorities accept the stand of the Nagaland Government. The Chief Secretary, Assam in his evidence says that under the terms of the Interim Agreement it was not open to Assam to have located a police station at the point where it was in fact located. And this amounted to contravention of the agreement. Whatever an independent reading of the Interim Agreement might therefore be, on the practical plain the stand of both Governments was that the establishment of a police outpost/police station by Assam would be a violation of the agreement.

CHAPTER V

1. SEQUENCE OF EVENTS LEADING TO THE CONFLICT

2. WHETHER THE CONFLICT AND RESULTANT LOSSES COULD HAVE BEEN AVERTED

Incident of 20th April, 1985

5.1 A summary of the positions taken by Assam and Nagaland in their affidavits regarding various developments which finally culminated in the June armed clash has been given in Chapter III.

5.2 As to the boundary problem between the two States, the Commission is in agreement with the views of both the States that for a lasting solution, it is imperative that this fundamental issue of location of the boundary is settled without further delay.

5.3 Since the relations between the two States have since 1972 been governed by and large by the Interim Agreements arrived at between the two States and since there seem to be different views as to the interpretation of some of these provisions, this matter has been dealt with in a separate chapter, Chapter IV. The Nagaland Check Post at Merapani is specifically mentioned in the Interim Agreement and is also the central figure in the entire episode taking place over April-June. Chapter IV, therefore, gives a general background of the origin of this Check Post as also deals with the different interpretations of Clause 3(1) of the Interim Agreement dealing with the Check Gate.

5.4 The first two terms of reference are :—

- (i) The sequence of events leading to and all the facts relating to the conflict in the Merapani area on the Assam-Nagaland border; and
- (ii) Whether the conflict and resultant loss of human lives and damage to property could have been averted.

5.5 The main events which finally culminated in the actual clash of June 4-6th have been itemised in Chapter III, namely, the incident of 20th April, the incident of 22nd April, the May 1st Agreement, the Assam Check Gate established on 26th May, 1985, the Nagaland decisions of 28th May, 1985, and failure of the Chumukedima meeting held on the 3-4th June. Each of these events will be dealt with in the chapters that follow, the present chapter dealing with the first of these events, the incident of 20th April, 1985.

5.6 Early in the morning of 20th April, a contractor employed by the Veterinary Department of the Government of Nagaland took up the work of fencing around the Nagaland Police Check Gate towards the North in the direction of Merapani bazar. The Assam Police thereupon came to the Check Gate,

stopped this work and seized the fencing material. Relations between the Naga and the non-Naga public on the border being what they were, a large number of people from both sides gathered on the spot and the Nagaland Armed Police stationed at their Company Headquarters at the foothills also marched to the Check Gate in platoon strength. There was an atmosphere of tension and general unease. By the evening, the Deputy Inspector General of Police (Eastern Range), Assam accompanied by the Superintendent of Police, Jorhat and some other officers had reached the spot and from the Nagaland side there was the Sub-Divisional Officer, Bhandari. There were some discussions between the two sides. It was generally agreed that the armed police which had gathered on the spot from both sides would be withdrawn and as to the seized fencing material, the matter would be taken up at a higher level. Things seem to have been sorted out for the moment.

5.7 Assam's position is that it was quite wrong on the part of Nagaland to have taken up this fencing work without getting the concurrence of Assam. In fact, this fencing was taken up in spite of the opposition of the Assam Government to such a move by Nagaland. It is further contended by Assam that really speaking the chain of events which should be examined by the Commission as contributing to the final clash really began with the March fencing and not with the 20th April fencing. On the 19th of March, the Nagaland authorities took up construction of fencing at their police check gate towards the South i.e., towards the foothills. There was a meeting between the two Border Magistrates on the 25th March where it was agreed that this fencing work should be stopped. Nevertheless, the Nagaland authorities went ahead with this work and had more or less completed the entire fencing in the Southern direction by the end of March. In doing so, they had encroached of land measuring about 3 Bighas and belonging to Babulal Gore. An FIR was lodged by Babulal Gore in the matter.

5.8 There was a meeting of the two Deputy Commissioners on the 3rd April where this issue came up—Annexure A54 of A III—. Deputy Commissioner, Jorhat referred to the question of shifting of the Nagaland Civil Police Check Gate to a new site away from the Merapani Police Station towards the foothills being under consideration with the two Commissioners. He said that under the circumstances renovation and construction of the check gate and repair/fencing around it should be stopped. The Deputy Commissioner, Wokha's stand was that there need not be any

objection to fencing the existing Government buildings which were allowed to be continued as per the 1972 agreement. While this is the position emerging from the minutes of the 3rd April meeting, it has been said in evidence by the Deputy Commissioner, Jorhat, that the Deputy Commissioner, Wokha, at the end of the meeting agreed to suspend fencing till the matter was gone into further.

5.9 In spite of these two meetings and the known stand of the Assam Government about any constructions etc. by Nagaland at this police check gate, the Nagaland authorities thereafter took up extension of fencing towards the Merapani bazar towards the north on the 20th April. Here again, they encroached on private land belonging to a forest villager, Puwaram Kachari. According to Assam, an FIR was lodged by Puwaram Kachari and the case was registered at the Merapani Police Station under sections 147/149/447 and 506 of the Indian Penal Code against the contractor of the Nagaland Government. Though the contractor was asked to stop the work, he refused to do so. Therefore, the Officer-in-Charge of the Merapani Police Station seized the fencing material in connection with this criminal case and took it to the Police Station. No seizure list could be given to the contractor as he had fled away from the spot.

5.10 This construction at the Civil Police Check Gate at Merapani, according to Assam, and particularly by extending the area around the check gate towards the north and the south by erecting iron fencing was illegal and had resulted in encroachment on private land both towards the south and the north. It was also in violation of a decision taken at the meeting of the two Commissioners on the 18th of January, 1985. It had been decided at the meeting that an alternative site for the construction of the Merapani check post building at a place 50 yards ahead from its present location towards Nagaland would be considered by the Government of Nagaland.

5.11 The Assam Government's point is that it was absolutely wrong on the part of the Nagaland authorities to proceed with any construction or erection of fencing while this issue was pending consideration of the appropriate authorities. Then again, the matter had also been considered by the Border Magistrates and the two Deputy Commissioners. The Nagaland authorities knew very well that the Assam Government would raise objection if Nagaland tried to make any construction around the Police check gate. They had done so earlier in 1966 and 1979. On those occasions also building materials were seized. There was a great deal of correspondence and discussions on the subject. In this background, Nagaland should have desisted from making any construction in and around the check gate till a decision on the alternative site had been taken. Knowing fully well the sensitivities of the Assam Government on the point, Nagaland deliberately provoked Assam and its police post by erecting fencing around the check gate on the 29th March and on the 20th April, 1985. Naturally, the Assam authorities had no alternative but to stop this

construction and seize the fencing material in the same way as was done in 1966 and 1979.

5.12 The specific cause, therefore, of what followed was the unilateral and unauthorised erection of this fencing by Nagaland. They were not entitled to make any such erection under the provisions of the 1972 interim agreement. The matter had been under discussion at various meetings at the level of Commissioners and even Chief Secretaries and was as a matter of fact pending decision of the Nagaland Government itself as to the alternative location 50 yards towards Nagaland.

5.13 According to Nagaland, however, it was the forcible seizure of the fencing material by the Assam Police which was the real cause and the starting event leading to the final catastrophe. The Nagaland contractor R. Lotha was doing fencing work on the 20th April at the check gate when 38 iron rods i.e. the fencing material were seized by the Officer-in-Charge Merapani Police Station. He was accompanied by the Assam Battalion Sub-Inspector, Mukund Baruah and some other personnel from the Assam Armed Police. The seizure was made at gun-point. The Assam public assisted in the seizure and in the removal of the fencing material to the Merapani Police Station. This generated a great deal of tension amongst the Nagas who regarded this as an affront. The seizure was articles belonging to the Nagaland Government, the seizure was made from the check gate of the Nagaland Government, there was no prior consultation with the Nagaland Government, the manner of effecting seizure at gun-point was a further affront, no seizure list was given.

5.14 In effect, what all this amounted to was forcible stopping of work by Assam and removal of fencing by naked force with the help of the Assam public. It was the forcible seizure of material by Assam from the Nagaland Government check post by intimidation of Nagaland officers at gun-point and participation of the Assam public in the matter which generated tension amongst the Naga inhabitants of the area and increased their sense of apprehension and panic. If a Government establishment could be treated this way, what guarantee was there for Naga inhabitants residing in the area? It was this that led to the Nagaland Armed Police being brought into the check gate which in turn led to additional Assam Armed Police being brought into the Merapani Police Station thereby creating a confrontation of the armed police forces of both sides. The event that is significant, therefore, is the seizure and the gathering of the Assam Police and also the public, not the comparative merits from the legal point relating to the authority of the Nagaland Government to make any constructions at the check gate or not.

5.15 In this background three or four points have been made by Nagaland. Firstly, that the seizure was forcible, and there was no legal justification for it. The contractor R. Lotha and the Officer-in-Charge of Police Station, Bhandari, Z. Lotha were present at the

time of the incident. Officer-in-Charge, Bhandari has filed an affidavit in—N VI. R. Lotha, the contractor and Z. Lotha, Officer-in-Charge, Bhandari were also produced for oral examination and cross-examination and it has been said by both of them that there was forcible seizure at gun-point. This fact, therefore, stands un rebutted. The Assam case is that the seizure was made by the Assam Officer-in-Charge Merapani Police Station on receipt of a complaint of trespass lodged by Puwaram Kachari. Tularam Das, the Officer-in-Charge was not called as a witness and offered for cross-examination. Mukund Baruah, Armed Battalion Sub-Inspector, who accompanied the Merapani Police Station Officer-in-Charge and who threatened persons at the Inner Line Permit Check Gate with his stern gun was also not called as a witness and offered for cross-examination. They were the only eye witnesses and officers who were actually produced on behalf of Assam like Shri P. V. Sumant, Deputy Inspector General of Police (Eastern Range), Shri A. K. Mallick, Superintendent of Police, Jorhat, and Shri B. K. Gohain, Additional Deputy Commissioner, Jorhat, came to the spot later in the day and had no personal knowledge of the incident.

5.16 The second point made by Nagaland is that the lodging of an FIR by Puwaram Kachari on the morning of 20-4-1985 is itself doubtful if one goes by various documents and other connected evidence that has come on record. Firstly, the person who lodged the report, Puwaram Kachari, did not come forward before the Commission to verify the truth of this. The Officer-in-Charge of the Police Station who recorded the FIR also did not appear. The English translation of the FIR was made by the Deputy Superintendent of Police, Goswami. He also did not come forward to verify the truth of the matter. Secondly, immediately after the event, some messages were sent by the Assam officers, and in none of these is there any mention of an FIR by Puwaram Kachari or any reference to private land being encroached upon. Annexure 57 of A III—dated 20th April sent by Deputy Commissioner, Jorhat to Deputy Commissioner, Wokha makes no mention of Puwaram or any complaint or FIR by him. Annexure 104 of A III—dated 20th April sent by Additional Deputy Commissioner, Border to Assam, Dispur, also does not say anything about Puwaram or any complaint by him. There is similarly, no mention of Puwaram or any complaint by him in Assam Exhibit A (4)—the message dated 21st April, 1985 sent by Superintendent of Police, Jorhat to Police Guwahati. A 71 in A III—the message dated 21-4-1985 from Deputy Inspector General of Police (Eastern Range) to Police Headquarters also makes no mention of any complaint. In fact, it says that the public of Merapani complained as this was in violation of agreement between Deputy Commissioners of Jorhat and Wokha, a police party of Merapani Police Station under a Sub-Inspector with force went to the spot and asked the contractor's labourers to stop the work. As they refused, the police party with the help of public labour pulled out the new fencing posts erected and seized a total of 38 fencing posts and brought them to the Police Station. In Commissioner, Upper Assam Division's message of 20th April to

Commissioner, Nagaland—page 50 of A VI—also there is no mention of Puwaram Kachari or any FIR.

5.17 Thirdly even assuming that there was an FIR lodged by Puwaram Kachari, the seizure of fencing materials by the Officer-in-Charge, Merapani, according to Nagaland was in complete violation of the provisions of the Cr. P. C. and was illegal and high-handed. Mandatory provisions of the law were not complied with. Apart from this, Armed Police could not be present. The seizure, therefore, was illegal.

5.18 Lastly, it has not even been established that the land on which Nagaland is supposed to have trespassed belonged to Puwaram Kachari or was in his possession. The land being forest land belonged to Government. There can be no question of Puwaram Kachari being the owner. A forest villager can have some rights but these would be specifically given in term of the Forest Regulations and any other law applying. In his earlier FIR of 16th March, 1979, Puwaram Kachari had stated that he was in possession of a plot of land measuring 4 bighas under a formal agreement. The simple thing for Puwaram or Assam was to have produced this agreement. That was not done. The fact that there was an agreement or patta should also be clear from the stand taken by Assam in one of the Commissioners' meetings that of 21-3-1979—A VII—where "from the Assam side it was stated that the land where the construction had been started was patta land of a forest villager..." Reference to patta is also to be found in various messages of Assam Officers in March 1979—for example, messages of 17-3-1979 and 20-3-1979—Annexures C5 and C6 of A II—. No such patta or lease was produced.

5.19 The District Forest Officer, Shri S. Doley, was specifically produced before the Commission by Assam with records relating to the Doyang Reserved Forest. He referred to the Jamma Bandi register relating to 1957, but interestingly, the Dag numbers for Puwaram Kachari do not tally with the Dag numbers of the land supposed to have been encroached upon and the District Forest Officer was unable to produce a map showing the location of the land in question. In fact, he admitted that the Jamma Bandi did not show the location of land. It merely gave other particulars. There is thus no clear evidence to show that Puwaram Kachari was in possession of this land and, therefore, this particular ground taken by Assam, is to be rejected. It must be remembered that from about 1959 onwards when the check gate first came to the Assam Rifles and then later to the Government of Nagaland, there was not a single protest by Puwaram Kachari or any one else for that matter regarding occupation of or trespass on that land. As to the FIR lodged by Babulal Gore, it is significant that it was lodged on the 29th March, 1985, when the fencing work towards the south is supposed to have been completed and not earlier in the month when it was started.

5.20 In fact, this objection that the land belonged to a forest villager seems to have been given up by

Assam, as would be clear from the minutes of the Commissioner-level meeting where this matter was discussed. At the 14th May, 1982, meeting—A VII—, it was expressly agreed that Deputy Commissioner, Wokha could construct the Merapani check post building. At the 7th June, 1982 meeting—A VII— Assam had said that Nagaland could go ahead with the construction.

5.21 To sum up, the Nagaland position is that the 1972 agreement permits Nagaland to continue the check gate. Therefore, the necessary repairs or reconstruction work for the maintenance of the check gate is permissible under the agreement. Erecting fencing around the building was both necessary and reasonable. In any case, the 1972 Agreement had become academic because at the Commissioner level meeting it was agreed that Nagaland could erect new structures in place of its old and dilapidated structures. It was thus open to Nagaland to have made this fencing and this fuss by Assam at this stage is misconceived and uncalled for.

5.22 The issues that arise from the respective stands of the two Governments are :—

- (i) Was it in order for the Nagaland authorities to have taken up this fencing work at their police check gate unilaterally considering the past history, the 1972 Agreement and discussions at the various Commissioner level meetings, particularly that of the meeting of 18th January, 1985 ?
- (ii) Was the seizure of the fencing material by the Assam authorities justified and properly done ?
- (iii) To what extent were (i) and (ii) above responsible for escalation of tension ?

5.23 The past history of the Nagaland police check gate has been dealt with at some length earlier. There can be no doubt that the initial Nagaland presence at this check gate was an encroachment. It was clearly recognised by the Nagaland authorities that Merapani and the Doyang Reserved Forest were outside Nagaland and within Assam and they had requested Assam's permission for the continuance of this check gate at Merapani. There were earlier attempts at construction in 1966 and the construction material was seized by Assam. The position prior to the 1972 Interim Agreement, therefore, was that Assam had agreed to Nagaland keeping this police check gate for the purpose of enforcing the Nagaland Security Regulations on the condition that token rent was paid, that Nagaland applied formally for retaining the check gate and finally, that such retention would be on the clear understanding that any construction etc. would be made under intimation to and with the express approval of Assam.

5.24 It is not possible to agree with the argument advanced by Nagaland that after the 1972 Agreement all this past history is of no relevance to anything

concerning the police check gate and that the only yardstick would be the interim agreement. In the affairs of Governments past history is always important and relevant and in any case the interim agreement does not say that the past has become irrelevant. In fact, past history is quite clearly reflected in the interim agreement itself. The term "purely provisional and temporary measure" indicates that even within the agreement which itself was of an interim nature, Assam were agreeing to this particular provision as a special measure. Had the position and status of the Inner Line Permit Check Gate not been in question, there was no reason for such a provision to have been included.

5.25 It must be remembered that the thrust of Clause 3(1) of the interim agreement of 2nd May, 1972, is the enforcing of the Nagaland Security Regulation, 1962. That is the main purpose and objective. Physical presence of the check gate would be incidental to this function and perhaps it was because of this that either within the agreement itself or separately no clear cut arrangement seems to have been formulated to describe the incorporate in legal terms the rights/obligations of the Nagaland Government on this area or piece of land. There is no mention anywhere of the boundaries of the police check gate as they existed in 1972, there is no mention of the area, there is no mention of any building or structure that existed at that time, there is no stipulation as to any formal allotment or terms of this allotment so that one can be clear as to who was responsible for repairs, reconstruction or any alternations, additions and so on. Obviously, in the absence of any clear cut arrangement on this matter, the agreement of the Assam authorities would be essential for not only any constructions, reconstructions, fencing but even for repairs. Particularly so when the Assam Government had made no secret of the fact that they did not take kindly to Nagaland taking up such repairs etc. on their own.

5.26 As a matter of fact except that the point is now being made, Nagaland do not appear at any stage to have seriously questioned the fact that Assam's permission in this matter was necessary. Otherwise, there was no reason for this issue to have come up and be discussed at various meetings for a period of 5 or 6 years at the level of Commissioners and Chief Secretary. These various meetings have already been discussed in detail in the previous Chapter and it is not necessary to repeat the same thing once again. At none of these meetings did Nagaland ever say that Assam had no business to sit in judgment over what Nagaland could do at this check gate as in terms of the 1972 Agreement, all these constructions etc. were matters entirely for Nagaland and nobody else.

5.27 At the 21st March, 1979, Commissioner-level meeting, for example, held soon after Nagaland had attempted to put up some structures at the check gate and the Assam Government had stopped the work and seized the construction material, Nagaland only suggested that before this seizure the matter could

have been discussed between the Deputy Commissioners of both the States and amicably settled. At the 11th September, 1979, meeting of Commissioners, it was Deputy Commissioner, Wokha who brought up the issue about the construction proposed to be undertaken by the Nagaland Government to replace the existing dilapidated construction. The decision was that the two Deputy Inspectors General of Police would recommend the minimum accommodation for police personnel required. At the 22nd September, 1979, meeting reference was made by the Assam side to the land on which construction was proposed to be made belonging to a private individual. The Commissioner, Upper Assam Division, was, therefore, to examine in what way this site could be made available. Nagaland were party to this decision and made no objection to the Commissioner, Upper Assam Division, going into these matters.

5.28 At the 12th December, 1980, Commissioners meeting the issue is referred to as "Permission to be granted for construction of suitable accommodation of the personnel in the Merapani Check Gate." Here again, Nagaland did not raise any objection as to why there should be any permission of Assam required by them.

5.29 At the 14th May, 1982, meeting of Commissioners there was a decision that the Deputy Commissioner, Wokha would construct at Merapani Check Post building. It was at this meeting that with reference to payment of rent, Deputy Commissioner, Wokha had said that in that event the Government of Nagaland would be reduced to the status of a mere forest villager and this would also be in violation of the 1972 Agreement which had allowed this check post. It seems that in the context of earlier discussions at various meetings and private land being involved at this point rent was being asked for the same land, which was with the private individual. In other words, as seems to have been mentioned by Deputy Commissioner, Wokha also, the status of the Check Post would be that of a forest villager. If this was the position, it is not clear how Deputy Commissioner, Wokha had then said that this would amount to a violation of the 1972 Agreement. Firstly, this extra private land which would now be utilised for the construction of the building was not part of the Check Gate in May, 1972 when the Agreement was concluded. It would not, therefore, be covered by the Agreement at all. Secondly, in view of the provisional and temporary nature of the Check Gate it was open to Assam to lay down terms and conditions for occupation of land on which the Check Gate was located; this would in fact be only reminding the Nagaland Government of the earlier stipulations which had been made some time in the middle sixties and which had not been acted upon by Nagaland. This is, however, besides the point. The main thing that emerges is that at this meeting Nagaland were seeking the agreement of the Assam Government to proceed with construction.

5.30 The meeting of Chief Secretaries of 7th June, 1982 noted that an injunction had stopped the con-

struction work and it was agreed that the Commissioner, Upper Assam Division would look into the matter and sort out difficulties in regard to the present site and in case it was not possible to do so, an alternative site near the present site would be allowed. Nagaland were, therefore, to await the efforts of the Commissioner, Upper Assam Division about the present site and even agreed to an alternative site in case difficulties persisted. The same conclusion emerges from the 5th August, 1983 Commissioner-level meeting.

5.31 At the 18th January, 1985 Commissioner-level meeting, Nagaland were very much a party to the decision that alternative site for construction of Merapani Check Post building at a place 50 yards ahead from the present location towards Nagaland would be considered by the Government of Nagaland.

5.32 The matter does not seem to have been discussed at any Commissioner's level meeting subsequently by the time that the conflict took place. The conclusions that one can draw from the narration above are firstly, that at no time did Nagaland say that they could raise constructions or fencing etc. without taking Assam into confidence and getting their agreement; secondly, that the matter remained under discussion for a considerable length of time and no particular anxiety was shown to speed up matters; not only by Assam but also by Nagaland; thirdly, that it will be difficult to doubt the contention that construction that was contemplated would be on private land which was not part of the check gate at the time; fourthly, that the individual concerned had raised objections about construction which had been started some time in 1982 with the agreement of the Assam Government; fifthly, that in view of this problem of private land etc. both sides had agreed that an alternative site near the present site would be allotted if this problem could not be sorted out. In fact, in January, 1985, it was agreed that an alternative site 50 yards towards Nagaland would be considered. It might be mentioned that evidence shows that Commissioner, Nagaland following the 18th January, 1985 meeting actually made a recommendation to his Government—Commission Exhibit XXXV—suggesting that the check gate be shifted to a site 50 yards towards Nagaland which he had seen and approved. Nothing has come on record to show that decision was taken by the Nagaland Government except that the Chief Secretary, Nagaland Government said in his evidence that the proposal was turned down, and his Government was firm that the right to continue in terms of the 1972 Agreement at the same location should be reiterated and enforced.

5.33 Actually, after the decision taken at the 18th January, 1985 meeting of Commissioners, it was insubordination and indeed defiance of superior authority by the District Administration, Wokha to have gone ahead. It is worth quoting from the evidence of Shri Lalthara, the then Deputy Commissioner, Wokha on this point—

".....I am aware of the decisions taken at that meeting about the ILP. I am not aware

of the action taken by the Commissioner or the Government. Then said Commissioner had referred the matter to Government. I do not know what happened thereafter. I know what recommendations the Commissioner had made. The recommendations as I understand was that Nagaland Government will consider the question of shifting Nagaland ILP Check Gate to a place 50 yards away from the present site. When fencing started in March and April, 1985, the matter was pending with the Government. As far as I know, the Veterinary Department executed the work. I did not advise the Veterinary Department not to take further action because the matter was pending with the Government. I did not consider this my duty. Because it would amount to blocking the Department's programme as no decision had been taken by Government. Decisions of Commissioners, Chief Secretary and Deputy Commissioners are to be respected if these are definite decisions taken at meetings. There was no definite decision at the 18th January, 1985 Commissioners meeting, that the Nagaland Government can go ahead with its construction of fencing nor was there any decision to the contrary. In view of the already existing programme of the Veterinary Department, I would agree that the work of fencing should go ahead because this fencing can be easily shifted as and when required. When an important matter is pending with Government, I do not like to interfere with that matter. But in the present case, fencing does not interfere or prevent the Government from taking any decision. This was an important matter pending with the Government. I never thought that the fencing would hurt the sentiment of the Assam Government in view of the situation, especially in view of the fact that so many construction works and repairs were being done by Assam in the same area."

5.34 Whatever the eventual fate of the recommendations made by Commissioner, Nagaland following the 18th January, 1985 meeting, on the 20th of April the matter was certainly pending and under consideration of the Government of Nagaland. The Deputy Commissioner, Wokha had under the circumstances no business whatsoever to have taken it on himself to proceed with fencing at the Check Gate. There can be no two views about this. There was definitely a decision existing at that time, and till there was a firm direction from the superior authorities, as far as Wokha Administration was concerned, there can be no question of their taking up any construction or fencing at the Check Gate.

5.35 The Commission finds it odd that even in August, 1986 when the Chief Secretary, Nagaland appeared for evidence, he could say—

"....If I had been Commissioner, Deputy Commissioner or any other authority, I also

would have taken up erection of fencing of ILP on 20th April even in the background applying to the ILP and in the situation prevailing at Merapani at that time. This fencing was necessary in view of the fact that Assam had established a Border Police Post and Police Station just opposite to ILP Check Post. After seizure of fencing by the Assam authority situation demanded that NAP had to go to the Check Post. This would be in violation of 1972 Agreement. But the provocation given justified this.."

5.36 Therefore, it will be clear that neither on the basis of past history and the 1972 Interim Agreement, nor on the basis of the stand of Nagaland in the various meetings and discussions over the period 1979 to 1985, was it ever contended that Nagaland do not need to consult anybody and were free to do any construction, fencing etc. at the Check Gate. In view of this it will have to be held that it would not be in order for the Nagaland authorities to have unilaterally taken up erection of fencing at the Check Gate on 20th of April. Nor was it in order for them to have taken up similar fencing and completed it towards the Southern side in March.

5.37 Having come to the conclusion that it was wrong on the part of the Nagaland authorities to have taken up this fencing work on the 20th April without getting Assam's agreement, the next point for examination is whether the reaction of the Assam Government by way of seizure of the fencing material was justified and properly done.

5.38 As had been briefly indicated earlier, Nagaland have raised three or four points in this matter to support their contention that this seizure by Assam was totally illegal, uncalled for and an affront to Nagaland and if in this whole transaction of the 20th April, one has to identify the single cause which was one in the chain of events leading to the June conflict, it was not the fencing by Nagaland as such but the forcible seizure by Assam.

5.39 The first point made is that the seizure was illegal since there is considerable doubt whether the action of the Assam Police authorities in seizing the fencing material was lawful and part of an investigation under the law; it is doubtful if any FIR was at all lodged by Puwaram Kachari on the morning of 20th April, 1985. Two reasons are given for this statement. First, that Puwaram Kachari was not produced for oral evidence; Tularam Das, the Officer-in-Charge, Merapani Police Station who is purported to have recorded the FIR was not produced. Tankeswar Dev Goswami, Deputy Superintendent of Police who made the English translation was not also produced. A copy of the FIR submitted for the consideration of the Commission does not have the stamp of the Magistrate's Court. Secondly, there are some messages by the Assam authorities at the time of the episode in which there is no mention of land being private or an FIR being lodged by Puwaram Kachari—the point being that surely if that were the case some reference would have appeared in these messages."

messages referred to are—Annexure 57 of A III—, Annexure 56 of A III—, Annexure 71 of A III—, the message at page 50 of—A VI—, and Assam's Exhibit A (4).

5.40 A 57—is a wireless message dated 20th April, 1985 from the Deputy Commissioner, Jorhat to the Deputy Commissioner, Wokha and refers to a report received that the Nagaland Government were extending iron fencing posts around their check gate upto Merapani bazar bridge inside Assam territory, that at the 3rd April meeting it had been agreed that the erection of fencing would be stopped. A 56 and A 71—are more or less identical. Both are dated 20th April, 1985, the first being from the Additional Deputy Commissioner (Border), Jorhat to Guwahati and the second being Deputy Inspector General (Eastern Range's) message to Police Headquarters at Guwahati

5.41 It is true that—A 57—makes no mention of an FIR or of construction being on private land. The other two messages however do refer to this construction being on private land. At the same time, these messages also refer to a complaint not by Puwaram Kachari or a private individual but to one by the public of Merapani. The messages then say since this was in violation of the agreement of 3rd April between the two Deputy Commissioners, a police party of the Merapani Police Station under a Sub-Inspector with force went to the spot and asked that the work be stopped. As this was refused the police party with the help of public labour pulled out new fencing posts that had been erected and seized a total of 38 fencing posts. Within 15 minutes of this action, at about 0945 hours the Company Commander of the Nagaland Armed Police at the foothills along with a platoon came to the post and took up position in the Check Post. Members of the public from both sides also gathered. These messages were sent after the Deputy Inspector General of Police (Eastern Range) and the Additional Deputy Commissioner (Border) from Assam had gone to the spot towards the evening of 20th April. The matter seems to have been discussed with the Sub-Divisional Officer, Bhandari and the Company Commander of the Nagaland Armed Police stationed at the foothills. It was agreed that the Nagaland Armed Police platoon should be sent back. This was done and the public also dispersed. The Nagaland officers wanted release of the seized posts but since, as the messages say "these were seized in a regular case, they were not returned".

5.42 The message at page 50 of—A VI—is a message from the Commissioner, Upper Assam Division dated 20th April, 1985 to the Commissioner, Nagaland. This refers to the fencing that was taken up on the 20th by Nagaland; that Nagaland Armed Police had been deployed in support of this fencing, that it was in violation of the agreement between the two Governments and should be stopped, as has been decided at a meeting between the two Deputy Commissioners. There is no mention of an FIR by Puwaram, Kachari or the construction being on private land.

5.43 Assam's Exhibit A (4)—is a message dated 21st April from the Superintendent of Police, Jorhat to Police Headquarters at Guwahati. It says that on the 20th April at about 9.00 A.M. a contractor of Veterinary Department of Nagaland had started construction of fence near Cattle Quarantine Check Post with the help of labour. The construction was in Assam territory in a private land. On receipt of complaint the staff of Merapani Police Station went and asked the contractor to stop the work. They did not and finding no other alternative, the staff of Merapani Police Station with the help of public labour removed 38 numbers of iron posts and seized them in a regular case.

5.44 It will be seen that messages at—Annexure 56 and 71 of A III—and in Assam's Exhibit A (4)—do make reference to private land and to a complaint. It is not, therefore, correct to say that there is no mention of a complaint by Puwaram Kachari. It is true that Puwaram as such is not mentioned but private land and existence of a complaint is certainly indicated in these messages. Annexure 57—the message of Deputy Commissioner, Jorhat to Deputy Commissioner, Wokha and Commissioner, Upper Assam Division's message to Commissioner, Nagaland at page 50 of A IV—it is true, make no reference of private land of Puwaram or a complaint.

5.45 There is admittedly reference to Puwaram Kachari lodging a complaint at 9.00 A.M. on 20th April in a message at—A 55 of A III—which is a message dated 20-4-1985 sent by the Officer-in-Charge, Merapani Police Station to the Superintendent of Police, Jorhat. The contents of the complaint are also described in brief in this message to the effect that at about 8.00 A.M. some Naga persons armed with Daos and Spears had encroached on his land situated by the spot of Nagaland Veterinary Check Gate and forcibly erected 38 numbers of iron posts for erecting fencing. When he protested he was threatened by the Nagas with dire consequences. A case was registered on this complaint and the fencing material seized. It has been said by Nagaland that this message is spurious as Deputy Commissioner, Jorhat in his evidence had expressed ignorance of such a message.

5.46 The point now is whether on the basis of the contents of these messages it can be held that there was no FIR lodged by Puwaram Kachari. It must be remembered that there is an affidavit by Puwaram Kachari that he had lodged an FIR. There is an affidavit by the Officer-in-Charge, Merapani saying that an FIR was lodged. A copy of the FIR page 309 of A VI—has been submitted and is one of the documents duly supported by an affidavit by the Assam side. As has been indicated above, some of these messages do make a reference to private land and to a complaint being lodged. There is then the specific message of Officer-in-Charge, Merapani, which there is no reason to believe is spurious. In any case, there is no firm evidence to indicate that this message is an after thought or a concoction. Under the circumstances, it will be difficult to hold that there was no

FIR lodged by Puwaram Kachari. The point then is whether the action for seizure of the fencing material resulted from and followed this FIR or was taken separately and independent of the FIR. The messages at—A 56 and A 71 of A III—could give the impression that this action was taken because of complaint by the public of Merapani and because the fencing was in violation of the agreement between the Deputy Commissioners of Jorhat and Wokha. However, the same messages do refer to the fencing material having being seized in a regular case. There is thus no reliable evidence to show that the FIR was not lodged on the morning of 20th April, 1985 at the time stated in it and that the seizure by the Merapani Police Station was not a result of this FIR. That being the position, it cannot be held that the seizure of fencing material by the Assam Police was illegal.

5.47 It is true that the testimony of Officer-in-Charge, Bhandari and the contractor R. Latha that seizure was at gun-point stands un rebutted. Mukund Baruah has also in his affidavit in—A III—accepted that he along with Digen Sharma, Second Officer-in-Charge of Merapani Police Station and four constables went on 20-4-1985 to the Inner Line Permit Check Gate. He also says that they asked that the construction which was being done illegally on private land be stopped. Further, that when this was not done, the Second Officer-in-Charge seized the iron posts. It is, therefore, conceivable that some show of force was made by the Assam side and going by the evidence of Officer-in-Charge, Bhandari and the contractor, also possible that seizure was at gun-point. This may have been ill-advised or unfortunate or depending on the circumstances, unnecessary. But it does not render the seizure itself illegal.

5.48 The next point is that the procedure adopted by the Assam Police for effecting the seizure was inconsistent with and in contravention of the provisions of the law as incorporated in the Cr. P. C. The mandatory provisions of Section 165, Cr. P. C. were not followed. For example, it is necessary that the search or seizure be made in the presence of two or more independent and respectable inhabitants of the locality. It is also necessary that the seizure list be signed by these witnesses. Although no evidence on this specific point was led by either side, it can be reasonably accepted that some of these provisions of search or seizure were not complied with by the Officer-in-Charge in the course of his investigation and seizure of the material.

5.49 The last substantial point is that in point of fact the so-called private land had never been or was not in the possession of Puwaram Kachari at all. It is argued that it is a fundamental principle of justice and judicial procedure that the onus of proving an allegation is on him who asserts it and not on him who denies it. Assam has alleged that the Nagaland authorities had trespassed into land belonging to a private individual Puwaram Kachari and it is for Assam to prove that there was trespass through evidence. This they have failed to do.

5.50 As has been briefly indicated earlier, Puwaram Kachari himself had referred to a formal agreement under which he was holding land in his FIR lodged on 16th March, 1979. No agreement was produced although the Commission on many occasions directed that documentary evidence should be produced to establish this simple fact of possession or title. No Patta or lease deed was produced either. The District Forest Officer did not have any record which could indicate that this specific plot of land belonged to Puwaram Kachari or that it was in his possession on the 20th April, 1985. Puwaram Kachari could in any case not own the land because the land here falls in Doyang Reserved Forest and would be governed by the provisions of the Forest Act, Regulations and Rules. He could only be in possession. No reliable evidence has come to establish this fact.

5.51 It is correct that documentary evidence by way of maps of the Forest Department with regular Dag numbers etc. along with possession documents have not been produced. There are some rough sketches in—A X and A XII—which cannot by themselves conclusively prove the fact of possession of land by Puwaram Kachari although they can certainly lead to the conclusion that Puwaram is a forest villager and in all probability did hold this piece of land as such. It must be remembered that in 1979 March, he had lodged an FIR and said that the constructions were being made on four bighas of land belonging to him. He was of course then referring to the entire area i.e., including the areas on which the then existing Check Gate stood. Either then or in subsequent discussion in various Commissioner level meeting etc. Nagaland had not at any time questioned this claim of Puwaram. In fact, in many of these discussions both sides had proceeded further on the basis that this land belonged to a private individual and there were some complications. There is also then a sketch map and the assertion in—A XII—daily shown and attested by a senior officer of the Forest Department of Assam. Here again, therefore, it will have to be held that while there is no conclusive documentary evidence that this piece of land was in possession of Puwaram Kachari, there are reasonable grounds to assume that was so.

5.52 In any event, there can be no difficulty in arriving at the conclusion that the Nagaland Police Check Gate itself as it was in 1972 did not have more than two bighas of land in it. This is clear from the report of the forest officials of 1972 or 1973 where the area of the Police Check Gate is indicated as one and a half bighas and that of the Veterinary Check Gate as half bigha. Total two bighas. According to records in—A XII—the total area of this land including land which is said to be in the possession of Maria Gore and Puwaram Kachari as indicated is about eight bighas. A rough visual inspection by the Commission itself when it had gone to Merapani on 3rd April, 1986 would quite clearly confirm that if this entire area is not eight bighas certainly much more than two bighas. Therefore, irrespective of the fact, whether the land in question was in the possession of Puwaram Kachari or not, it is quite clear that

it did not form part of the civil police check gate as it was in 1972. Fencing or construction taken up on the 20th April, therefore, means encroaching of land not forming part of the original check gate.

5.53. Broadly, therefore, on the point whether seizure of the fencing material by the Assam authorities was proper or not, the conclusion would be that while it could have been avoided because of the prevailing atmosphere, it was in the legal sense justified. It has already been held that there is no evidence on record on the basis of which FIR of Puwaram Kachari can be rejected as a concoction. That being so, registering of a case and the consequential action of stopping the work and seizing the material had the backing of law. Even otherwise, although this is not being argued before the Commission, the initial action of Nagaland being wrong, it could reasonably be expected that action by Assam would be on the same lines as it was in 1966 and 1979. In 1966, seizure was apparently under the Forest Act plus Regulations. Thereafter, on mature consideration, the case was compounded and the seized material returned in accordance with the provisions of the law. Later in 1979, the situation was almost identical to that in 1985. Then also seizure was on the basis of a complaint by

Puwaram Kachari. However, subsequently, the matter had been discussed at a meeting of Commissioners and again things were sorted out by mutually acceptable adjustments which included the return of the seized material. Possibly, on this occasion also the same thing could have happened had there been a chance for senior level consideration of the matter. This higher level contact was not possible this time because meanwhile the problem was further compounded by the incident on the 22nd April and the events that followed and the role of the Deputy Commissioner, Wokha which instead of reducing tension had the opposite effect. In short :—

- (i) It was not in order for the Nagaland authorities to have taken up this fencing work unilaterally.
- (ii) Seizure of the fencing material by the Assam authorities did add to the tension but cannot be held to be improper in view of (i) above.
- (iii) Both these actions led to a worsening of relations between the communities and Government functionaries at the border.



CHAPTER VI

(1) SEQUENCE OF EVENTS LEADING TO THE CONFLICT

(2) WHETHER THE CONFLICT AND RESULTING LOSSES COULD HAVE BEEN AVERTED

Firing Incident of 22nd April

6.1 The incident of 22nd April was another event in the chain of events, the cumulative effect of which was the eventual armed conflict in the first week of June. Depending on how one looks at it, this incident can be seen as consisting essentially of two parts. The first, the Deputy Commissioner, Wokha's coming to the Merapani Police Station of Assam accompanied by some officers, taking up the matter of seizure of fencing material by the Assam Authorities from the Nagaland Check Gate on the 20th April with relatively junior officers from the Assam side, and inspecting and even lifting the seized material which he came across on taking a round of the Police Station without any authority. The second, in the process while he was at the spot where the seized material was found by him and while he was inspecting this material, a shot was fired from the Assam side, apparently as was stated by the Deputy Commissioner, Wokha at him.

6.2 This episode of the 22nd April resulted in a further increase of tension in the situation existing in the Merapani area on the Assam-Nagaland border.

6.3 The respective versions of the two sides as to this event are contained in the affidavits, counter-affidavits and other documents filed by them. The Assam affidavit is as follows :—

"53. That on 22nd April, 1985 a very unfortunate and unhappy incident took place in the Merapani Police Station which aggravated the already tense situation in and around Merapani area in the Assam-Nagaland Border. The Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Superintendent of Police (Border), Nagaland and Sub-Divisional Officer (Civil), Bhandari being accompanied by one Company of Nagaland Armed Police collected near Merapani Quarantine Check Post at about 11.15 AM on 22-4-1985. Suddenly, the Deputy Commissioner, Wokha along with the aforesaid officers and armed Naga civilians entered the Merapani Police Station compound. The armed police personnel of the Merapani Police Station came to "stand to" position which is the normal practice to pay respect and compliments to the high officials visiting the Police Station. Meanwhile, a Company of the Nagaland Armed Police surrounded the Merapani Police Station compound and took up their

position. The Deputy Commissioner, Wokha abused the officers of the Merapani Police Station in a most objectionable language. Thereafter, he started checking the rooms and barracks of the Merapani Police Station without any authority of law and in a most undignified manner. On finding the seized iron posts, he attempted to take them away forcibly. The officers of the Merapani Police Station prevented him from doing so. The Deputy Superintendent of Police of Nagaland Armed Police attempted to snatch away the sten gun of an officer of the Assam Police. This unauthorised entry of Deputy Commissioner, Wokha and his men to the Merapani Police Station and their illegal and unwarranted acts created a serious situation. The entire Police Station was kept surrounded by the Nagaland Armed Police."

"54. That immediately on receipt of the information about the unauthorised entry of the Deputy Commissioner, Wokha into the Merapani Police Station, the Additional Deputy Commissioner (Border), Jorhat and Superintendent of Police, Jorhat, arrived at the spot and held discussions with the Nagaland officers. It is unfortunate that during the discussions, the Deputy Commissioner, Wokha made the allegation that he had been fired at by an officer of the Assam Police. Having received such a serious allegation from a high officer of the Nagaland Government, an immediate physical verification of the arms and ammunitions of the Merapani Police Station was undertaken by the senior officials of the Assam Police. On verification, all arms and ammunitions were found intact except one ballistic cartridge accidentally fired by a GF Rifle man while in "stand to" position in the Merapani Police Station. It may be pertinent to point out herein that the GF Rifle was not fitted with the discharger cup which clearly shows the firing of the ballistic cartridge was entirely accidental and harmless. It was agreed during the discussions that the Nagaland Armed Police personnel would be withdrawn, though some Nagaland armed police personnel continued to stay at the Check Gate.

It is really unfortunate and a matter of great regret that the Deputy Commissioner, Wokha, a senior officer belonging to the

Indian Administrative Service, could make an illegal and unauthorised entry into the police station of another State over which he had no legal and territorial jurisdiction. This unseemly behaviour of a high officer belonging to the Nagaland Government had encouraged other subordinate officers and Nagaland Armed Police to indulge in illegal activities in the Border areas."

The Nagaland affidavit is as follows :---

"8.1 The second incident took place on 22nd April, 1985. On that date, the Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Border Magistrate, Merapani, Nagaland Superintendent of Police, Border (Nagaland), Deputy Superintendent of Police, 4th Nagaland Armed Police, Merapani and Sub-Divisional Officer, Bhandari visited the Assam Police Station at Merapani at about 12 noon. The Deputy Commissioner, Wokha had earlier informed the Officer-in-charge, Merapani Police Station, Assam of his proposed visit and its object, which was to ascertain how the incident took place on 20th April, 1985 and where the seized materials were kept. At that time, Shri Dularam Das, Officer-in-Charge of Merapani Police Station, Assam was out of station, but his second Officer-in-Charge, Shri Digen Sharma was available in the office, and he informed the Deputy Commissioner, Wokha that the materials have been removed to Golaghat. The Deputy Commissioner, Wokha found, however, that some fencing materials were kept under the cover of two blankets behind the Police Station, and on removing the blankets he found that iron posts, plates, etc., were lying there. While the said Deputy Commissioner lifted one post plate and showed the same to the persons present there, Shri Mukund Baruah, a Sub-Inspector, Assam Police fired one round from his sten gun at the Deputy Commissioner, which missed him narrowly. The said Sub-Inspector shouted command to his men, and all of them raised their rifles in cocked position. Then the said Shri Mukund Baruah came out of his bunker with his sten gun pointing at the Deputy Commissioner and other officers and threatened to shoot down anyone attempting to come near him. He then left by a nearby mullah. After this, the Deputy Commissioner, Wokha and the other officials of Nagaland left the Police Station."

"8.3 The firing at the Deputy Commissioner, Wokha at the Assam Police Station at Merapani, coming closely on the heels of the forcible seizure of materials from the Nagaland Inner Line Permit Check Gate at Merapani two days earlier, greatly aggravated the tension prevailing at Merapani and the feeling of insecurity amongst the Nagas,

and made the situation an explosive one. This situation would not have come about, but for the said wrongful action on the part of the officials of the Assam Government on 20th April, 1985 and 22nd April, 1985."

"8.4 Although it was the Assam authorities who were responsible for the aforesaid wrongful act, the Deputy Commissioner, Jorhat, in a message dated 22nd April, 1985 addressed to the Deputy Commissioner, Wokha alleged that provocative acts of trespass into Merapani Police Station by the Deputy Commissioner, Wokha had caused the incident of 22nd April, 1985. In this message he alleged that a platoon of Armed Nagaland Police personnel headed by high Nagaland Police officials surrounded the Police Station of Merapani with a view to snatching away some iron posts seized by Merapani Police allegedly in connection with a police case. The Deputy Commissioner, Wokha was charged for causing breach of peace and tranquility of the area."

6.4 The contention of Assam is that it was *ab initio* entirely wrong for an officer of the status of a Deputy Commissioner in a district in Nagaland to have without informing his counterpart in Assam, more or less make a forcible entry into the Assam Police Station. He was accompanied by senior officers including police officers and also had with him a contingent of Nagaland Armed Police. The entry was forcible and the intention was to remove by force the fencing material which had earlier been seized under due process of law. He entered into arguments with very junior officers of the Police Station and used abusive and unbecoming language. He went to the extent of going around the Police Station and on finding the seized material, even got hold of some of this stuff. This was entirely unauthorised and he had no authority to do all this. It was this action of Deputy Commissioner which further compounded the problem that had arisen because of Nagaland taking up fencing of their check gate without concurrence of the Assam authorities, and in fact against their express opposition to such a course.

6.5 On the other hand, it is argued by Nagaland that the important thing about the incident of 22nd April is not the fact that the Deputy Commissioner went into the Police Station of Assam. The fact that is of significance is that while he was there a shot was fired at him. Only two days previously Assam had seized materials from the Nagaland Government check post forcibly and at gun point and with the participation and help of the Assam public. This in itself had generated considerable tension. It had led to the posting of the Nagaland Armed Police at the Inner Line Permit Check Gate and there was a well founded apprehension on the Nagaland side that Assam might take over the check gate itself by force. Following closely on the heels of the incident and only two days later, a shot was fired while the Deputy Commissioner was in the Assam Police Station. It is this fact which

generated further tension amongst the Naga inhabitants and the Nagaland Armed Police. The initial entry of Deputy Commissioner, Wokha into the Merapani Police Station may not have been entirely proper but was certainly not in itself of such major import as to further escalate tension to a crisis situation.

6.6 In the light of the above the following issues arise and need examining :—

- (i) Was it in order for the Deputy Commissioner, Wokha accompanied by his officers to go into the Police Station of an adjoining State in the manner that he did ?
- (ii) Was the shot that was fired intentional and aimed at the Deputy Commissioner or was this a case of accidental firing ?

6.7 In considering these issues, the approach of the Commission will be to go to the extent possible by the documentary evidence available to it in the shape of State affidavits, counter affidavits, affidavits of individual officers and non-officials etc. Oral evidence will be utilised only to supplement information that comes through these documents. In the event that there is a contradiction between the oral and documentary evidence, it will be the documentary evidence, particularly documentary evidence contemporaneous with the incident that will be used.

DC, Wokha's entry into the Merapani Police Station

6.8 It has been stated by the Assam side that it was most undignified and unwarranted on the part of a member of the Indian Administrative Service to go to Merapani Police Station accompanied by armed police with a view to take forcible possession of the seized material from a Police Station outside his territorial jurisdiction. The Deputy Commissioner, Wokha had no legal authority to search for the materials which had been seized in connection with a criminal case. If he was aggrieved with the seizure made by the Officer-in-Charge Merapani Police Station, he should have taken recourse to legal remedies available in a court of law. He should have informed his counterpart at Jorhat about his proposed visit. Instead of following established norms of official behaviour and attitude, he decided to take forcible possession of the seized material. Having entered the Police Station he first abused the Sub-Inspector and 2nd officer, he then started searching the Police Station compound including the barracks and so on. It has been argued by Assam that the Deputy Commissioner, Wokha was well aware of the ground rules which the two States had set for themselves in matters involving officers of one State going to the other. At a meeting of Commissioners on 13th July, 1976—A VII—it was agreed that whenever officials of one State enter the territory of other State for the purpose of crossing over to another area falling within their State, there should be no need of informing the State visited, but if they visit the area of the other State on official business, it would be better if they intimate the respective Deputy Commissioner in advance indicating the nature of official work.

6.9 The Nagaland position is that the Deputy Commissioner had gone to the Assam Police Station after giving prior intimation through a Sub-Inspector of Nagaland Police Stationed at Merapani. While accepting that it might have been an impulsive act on the part of Deputy Commissioner, it is stated that there was no question of unauthorised entry into the Police Station. He along with officers had gone to the Police Station in connection with the seizure of fencing material on the 20th April by police officers of Assam. This was done at gun point. No seizure list had been given to the contractor who was doing the work. The seizure was done in complete violation of the law of the land. It was therefore natural for the Deputy Commissioner to visit the Police Station with a view to enquire into the incident as the Naga people in the area were greatly agitated by the high handed action of the Assam Police.

6.10 Deputy Commissioner, Wokha's own perceptions as to his going to the Police Station and those of his superiors the Commissioner, Nagaland and the Chief Secretary, Nagaland can be seen in the relevant extracts from their evidence.

6.11 The Deputy Commissioner had on this stated as below :—

"I did not inform the Deputy Commissioner Jorhat that I would be going down to Merapani Police Station on the 22nd April, was aware that it had been decided that it would be better if when visiting the other State on official purpose, official of the two States intimate the respective Deputy Commissioners in advance of the nature of their official work. I did not have any difficulty in informing Deputy Commissioner, Jorhat in advance. If Deputy Commissioner, Jorhat had been present, the chance of the unpleasant incident that took place would have been much less. In retrospect now and in view of the unexpected incident that took place I think it would have been better if both of us could have been present. I have no hang ups in discussing matters even with officials outside formal meetings with functionaries like patwaries. I am a very simple and democratic person as far as protocol is concerned. I had gone on sudden impulse after discovering that there was no proper seizure. I went to the Police Station in my official capacity as Deputy Commissioner but not in exercise of my power as Deputy Commissioner. I asked for the seizure list as Deputy Commissioner, Wokha. In my judgement, this was a lawful exercise of my normal functions."

Shri N. Jakhalu, Commissioner, Nagaland stated as below :—

"I approve Deputy Commissioner, Wokha's action in entering Merapani Police Station on the 22nd April, 1985. I do not agree that it

was wrong for Deputy Commissioner, Wokha to enter the Police Station but it was not right for him to have lifted the seized material."

6.12 Shri I. Longkumer, Chief Secretary, Nagaland stated as below :—

"To my mind the action taken by Deputy Commissioner, Wokha in going to Merapani Police Station on the 22nd April along with his junior officers was not proper."

6.13 There can be no doubt that in the situation prevailing at that time, and particularly after the seizure incident, it was an ill-advised move on the part of Deputy Commissioner, Wokha to have directly gone to the Merapani Police Station accompanied by 4/5 of his senior officers including Superintendent of Police. He admits that he was aware of the 1976 decision about consulting the opposite Deputy Commissioner before such visit. Such consultation was particularly apt at this particular time and indeed, no matter how democratic minded Deputy Commissioner, Wokha was, it is difficult to understand what purpose he thought would served by his discussing matters with underlings who would have no authority to take decisions or have any meaningful discussion with him. If Deputy Commissioner, Wokha's intention was to defuse the situation, he should have obviously tried to establish contact with his opposite number, something he did very forcefully in other developments in the month following. He had no jurisdiction in the State of Assam and while in ordinary circumstances at the border officers of the two States do move about with a degree of informality, that was not the occasion for such informal movement. He should have known that this conduct of his was likely to be misunderstood and might read to problems as indeed it did.

6.14 It is difficult to understand how Shri Jakhlu Commissioner, Nagaland could say in his evidence that he approved Deputy Commissioner, Wokha's action in entering Merapani Police Station on 22nd April, 1985. This statement of his does not seem to be consistent with the otherwise reasonable, mature and sober stand that he took by and large through the entire episode of April—June 1985.

6.15 Impulsive or not, it was not in order for the Deputy Commissioner, Wokha to have gone to the Merapani Police Station in the manner that he did at that particular point of time. One does not have to accept the veracity of the Assam statements that he was very abusive with the Police Station staff or that he forcibly wanted to remove the seized material etc. to describe the visit as at the very least unwise and fool-hardy. This along with the rather emotional account given by him of the firing incident that followed to his Government to a large extent influenced the course of events that followed.

Firing : Intentional or Accidental

6.16 Irrespective of the advisability of Deputy Commissioner, Wokha's entry into the Merapani Police

Station or his proceeding to take the subsequent steps that he took, there is no doubt that the firing of a shot by somebody from the Assam side was an extremely unfortunate occurrence and did generate a great deal of tension. Intense emotions were aroused on both sides, particularly on the Nagaland side, as Nagaland seemed to have felt that this firing was a deliberate act, the shot being aimed at Deputy Commissioner, Wokha, a senior officer of the Nagaland Government and that this typified the contempt of the Assam Government for the life of the Naga people and Nagaland officers.

6.17 The strong emotion aroused on the Nagaland side can be seen in the two messages of 24th April and 26th April at A 19 and A 21 of A-III sent by the Commissioner, Nagaland to the Commissioner, Upper Assam Division. In the first, he said that it was shocking to hear that an officer of the Assam Police had fired at the Deputy Commissioner, Wokha and his party in the compound of the Police Station. It was even more regrettable that such a dastardly act should have been committed in connection with small matters like fencing materials etc. In the second message which was sent in reply to a communication he received from the Commissioner, Upper Assam Division about the episode and which made no mention of the firing incident, he said that instead of apologising for the firing incident by some irresponsible elements the Assam Government was taking of the problem having been created by the Nagaland authorities, a position that was completely unacceptable. Since the Commissioner, Upper Assam Division had not referred to the firing incident, it seemed that it had the backing of the Assam State Government.

6.18 That a shot was fired during the visit of Deputy Commissioner, Wokha at the Merapani Police Station is admitted by both sides. It is also accepted that it was fired by a person of the Assam Police. The Nagaland case is that it was fired by Assam Battalion, Sub-Inspector, Mukund Baruah of Assam Armed Police who fired at the Deputy Commissioner, Wokha from his sten gun. Assam's version is that the shot was fired accidentally by a Constable, Prafulla Bora from his GF Rifle. It will be useful to go back to what would be the most reliable evidence available in the shape of contemporaneous messages contained in the documents filed to see what account was given by officers of the Nagaland and Assam Governments at the time.

The Nagaland Case

6.19 The first version of the Nagaland side of the incident is contained in Annexure 25 in N-I, a message from Deputy Commissioner, Wokha dated 22nd April, the day of the incident, to his counterpart Deputy Commissioner, Jorhat and also Deputy Inspector General of Police (Eastern Range) Jorhat, Assam. In substance, this message says that Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Superintendent of Police (Border), Sub-Divisional Officer, Bhandari and Border Magistrate Merapani went to the Police Station that day in connection with fencing iron posts which were taken by force at gun

point by the Assam public in collaboration with Assam Armed Police from the inner Line Permit Check Gate on the 20th April. On going around the Police Station compound, Deputy Commissioner, Wokha observed that the Assam Police and Central Reserve Police Force were taking firing position in trenches. He also observed that there was some material covered with blankets behind the building which looked like seized material. Deputy Commissioner, Wokha along with Digen Sharma, the 2nd Officer of the Police Station and Y. Lotha, Deputy Superintendent of Police, Nagaland Armed Police went to the spot. The Deputy Commissioner lifted the blanket and found the seized material. He demanded explanation from the Assam Police officer as to why he had earlier been told that material had been taken away to Golaghat. Just then, as Assam Battalion Sub-Inspector who was later identified as Mukund Baruah shouted command to his men and all loaded their rifles in cocked position. The Assam Battalion Sub-Inspector himself fired from his sten gun aiming at the Deputy Commissioner but the bullet narrowly missed him. Then this Assam Battalion Sub-Inspector retreated from the bunkers still pointing his sten gun at Deputy Commissioner and other officers and threatening to shoot them if anybody came near him. This Assam Battalion Sub-Inspector's 2nd officer, Raman Hazarika, and the Sector Commander Chandra Bhan tried to bring him for discussion and examination of his sten gun, he ultimately escaped through the nullah. The message further says that Shri Chandra Bhan was a witness to the entire incident and Deputy Commissioner, Jorhat was asked to take suitable action against the Assam Battalion Sub-Inspector etc.

6.20 A report of the incident was apparently prepared the same day, that is 22nd April, 1985, by the Sub-Divisional Officer, Bhandari and is at Annexure 26 of N-I. This by and large gives the same account of the incident except that it says that the Deputy Commissioner, Wokha had gone out into the Police Station compound to answer a call of nature and not with any other purpose, that the 2nd officer Digen Sharma, Deputy Superintendent of Police Central Reserve Police Force Shri Chander Bhan, Border Magistrate, Nagaland, Superintendent of Police (Border), Nagaland, Raman Hazarika of the Assam Police and he himself were present at the time of detection of the seized material. Just then Assam Battalion Sub-Inspector, Mukund Baruah fired one around from a sten gun at the Deputy Commissioner and alerted all the jawans to fire at them. The sten gun fire did not hit the Deputy Commissioner etc.

6.21 Deputy Commissioner, Wokha's own report to the Commissioner dated 24th April dealing among other things with this particular incident is at Annexure 28 of N-I. Here it is said that the Deputy Commissioner, Wokha along with Superintendent of Police, Wokha and Sub-Divisional Officer, Bhandari reached the Nagaland check gate at about 11.00 AM on the 22nd April. The Border Magistrate and Superintendent of Police (Border), Nagaland were already on the spot. A Police Sub-Inspector was sent to the Merapani Police Station to inform the officials there of the

Deputy Commissioner's intention of visiting the Police Station to discuss and enquire about the seized materials. Thereafter, the Deputy Commissioner along with Nagaland officers mentioned, went to the Police Station. The report then gives the same account as in the earlier report about the Police Station staff telling him that the material had gone to Golaghat etc. The Deputy Commissioner then went out to answer a call of nature and noticed something behind one of the buildings covered by two blankets. He, accompanied by Y. Lotha, Deputy Superintendent of Police, Nagaland Armed Police and 2nd officer Digen Sharma, went to the spot followed behind by Superintendent of Police, Wokha and Superintendent of Police (Border), Nagaland and other officials. He lifted the blankets and then one of the iron posts demanding explanation from the 2nd incharge as to why he had been told such blatant lies. He also shouted at the 2nd officer charging that his action in removing the fencing material without any formality and keeping it hidden amounted to theft. Meanwhile, the report says, the Assam Police Platoon Commander shouted some command to his men who took firing position in the trenches. Then this platoon Commander later identified as Mukund Baruah opened fire at the Deputy Commissioner from his sten gun at a distance of about 15 feet only. The report then goes on to say at some point that Superintendent of Police, Wokha, Superintendent of Police (Border), Sub-Divisional Officer, Bhandari, Border Magistrate, Merapani, Deputy Superintendent of Police, Y. Lotha, Nagaland Armed Police and Chandra Bhan, Dy. Superintendent of Police, 48 Bn. Central Reserve Police Force were on the spot by that time. With the help of Chandra Bhan and Digen Sharma, the 2/IC Havildar Raman Hazarika checked the rifles of all the jawans in the trenches and it was found that all rifles were cocked with bullets in the chambers and none of them had been fired. Mukund Baruah meanwhile fled away still aiming his sten gun at the Deputy Commissioner and others. All attempts to arrest him made by Raman Hazarika and Chandra Bhan failed as he refused to surrender. He ultimately escaped through the nullah and disappeared.

6.22 Based on the report received from the Deputy Commissioner, Wokha, the Nagaland Government sent a message to the Assam Government under intimation to the Government of India, Ministry of Home Affairs, on the 24th April (Annexure 34 of N-I) that Platoon Commander Mukund Baruah had fired at the Deputy Commissioner, Wokha and party without any provocation while they were camping at Merapani to discuss about forcible removal of the iron fencing.

6.23 In another message of 24th April, Annexure 38 of N-I to Deputy Commissioner, Jorhat, Deputy Commissioner, Wokha had reported that Mukund Baruah had fired at him at close range without any orders or justification or provocation. He did so while the Deputy Commissioner was inspecting seized materials in the presence of Digen Sharma, the 2nd officer and the Sector Commander Chander Bhan.

6.24 The position taken by Nagaland on the allegation that the Assam Armed Police, Assam Battalion

Sub-Inspector, Mukund Baruah, had fired with his sten gun at Deputy Commissioner, Wokha as a deliberate act, can be broken up into three parts—the firing at the Deputy Commissioner; the Assam Battalion Sub-Inspector threatening officers with his sten gun after the act and then running away and escaping through a nullah; and Deputy Superintendent of Police, Chander Bhan of 48 Central Reserve Police Force trying to bring him back for discussion and examination of his sten gun before he escaped.

6.25 On the actual firing, Annexure 25 in N-I, the wireless message of Deputy Commissioner, Wokha, says that Deputy Commissioner, Wokha lifted the blanket and found the seized material. The Second Officer of the Merapani Police Station, Digen Sharma and Y. Lotha, Deputy Superintendent of Police, Nagaland Armed Police were at the spot. Just then Mukund Baruah shouted command to his men, all loaded their rifles and Mukund Baruah himself fired from his sten gun aiming at the Deputy Commissioner but the bullet narrowly missed him. Annexure 26 of N-I, the report of Sub-Divisional Officer, Bhandari, says that at the time of detection of the seized material by Deputy Commissioner, Wokha, from the Nagaland side, the Border Magistrate, Nagaland, Superintendent of Police (Border), Nagaland and the Sub-Divisional Officer, Bhandari were present at the spot. Just then Mukund Baruah fired one round at the Deputy Commissioner and alerted all the jawans to fire at them.

6.26 According to Annexure 28 in N-I, the report of Deputy Commissioner, Wokha, Deputy Commissioner, Wokha accompanied by Y. Lotha, Deputy Superintendent of Police, Nagaland Armed Police and Digen Sharma went to the spot (where he later discovered the seized material) followed by Superintendent of Police (Border), Nagaland, Superintendent of Police, Wokha and other officials. He lifted the blankets and discovered the seized material etc. At this time Mukund Baruah shouted some command to his men who took firing position and then Mukund Baruah opened fire at the Deputy Commissioner from his sten gun at a distance of about 15 feet only. This means that at the time of firing Superintendent of Police, Wokha and Superintendent of Police (Border) were present with Deputy Commissioner, Wokha at the spot where the seized material was discovered. However, the same message later gives the impression that Superintendent of Police (Wokha), Superintendent of Police (Border), Sub-Divisional Officer, Bhandari Border Magistrate, Merapani, Deputy Superintendent of Police Y. Lotha, Nagaland Armed Police and Chander Bhan, Deputy Superintendent of Police 48 Bn. Central Reserve Police Force, "were on the spot by that time", implying thereby that they had gradually gathered at the spot some time between Deputy Commissioner, Wokha arriving there and just after the firing incident.

6.27 This later position is confirmed by what Shri Ialthara, the Deputy Commissioner, Wokha says in his affidavit. He first says that just when he took one of the ironposts to have a closer look, one of the Assam policeman, later identified as Assam Battalion

Sub-Inspector, Mukund Baruah, the Platoon Commander, opened fire at him from his sten gun at a distance of about 15 feet only. Sub-Divisional Officer, Bhandari, Border Magistrate, Merapani, Y. Lotha, Dy. Superintendent of Police, Nagaland Armed Police and Chander Bhan were on the spot. His oral evidence on the firing matter is as follows:—

"After I have lifted one post of the seized material, I was fired at from my right side. The seized material was spread over the length of 8 to 12 feet, I presume. I did not see Mukund Baruah actually firing at me. Everybody saw him running away while pointing his sten gun at us and, therefore, I presume that it was he who had fired. . . . I and officers with me made some attempts to look where the bullet which I presume had been fired at me had gone. This was level ground and bullet must have gone up in the air. These officers were; Superintendent of Police, Wokha, Superintendent of Police (Border), Sub-Divisional Officer, Bhandari, Deputy Commandant 4th Nagaland Armed Police. There might have been some others. We searched for the bullet for about five minutes."

6.28 In the contemporaneous messages quoted above, there is no indication as to who actually saw the firing by Mukund Baruah except in Annexure 25 in which it is stated that Deputy Superintendent of Police, 48 Bn. Central Reserve Police Force, Chander Bhan was a witness to the entire incident Annexure 26, the report of Sub-Divisional Officer, Bhandari dated 22nd April, 1985 and Annexure 28, the report of Deputy Commissioner, Wokha dated 24th April, 1985 do refer to Chander Bhan being present at the spot but do not say that he actually witnessed the firing. There are only general statements to this effect made in the Nagaland affidavit and the messages quoted are also couched in general terms—that the shot was aimed at Deputy Commissioner, that Mukund Baruah fired one round from the sten gun at the Deputy Commissioner; that Mukund Baruah opened fire at the Deputy Commissioner from his sten gun at a distance of about 15 feet only; that Mukund Baruah had fired at Deputy Commissioner, Wokha and party without any provocation; the Deputy Commissioner, Wokha had reported that Mukund Baruah fired at him at a close range without any order or justification or provocation etc.

6.29 In his cross-examination, Deputy Commissioner, Wokha has himself said that he did not see Mukund Baruah actually firing at him. Everybody saw him running away while pointing his sten gun at him and others with him and therefore he presumed that it was he who had fired. This statement of his is certainly at considerable variance with what comes in his examination in chief i.e. his affidavit where he made a categorical statement to the effect that one of the Assam Policemen, later identified as Assam Battalion Sub-Inspector, Mukund Baruah, Platoon Commander, opened fire at him from his sten gun at a distance of about 15 feet but that the bullet missed him. Although these messages do not refer to any

eye witnesses except Chander Bhan in Annexure 25—"D Sector Commandant of Central Reserve Police Force, Deputy Superintendent of Police Chander Bhan is a witness to all the incident", it seems that along with Deputy Commissioner, Wokha there were some other officers present at the time when the Deputy Commissioner detected the seized material. According to Annexure 26, even Border Magistrate, Nagaland, Superintendent of Police (Border) and Sub-Divisional Officer, Bhandari from the Nagaland side were present at the time of detection of the seized material. There are some contradictions on this point in Annexure-28 but it does say in the opening part that Deputy Commissioner, Wokha was accompanied by Y. Lotha, Deputy Superintendent of Police, Nagaland Armed Police, when he went to the spot and was followed by Superintendent of Police, Wokha and Superintendent of Police (Border). It was then that he lifted the seized material etc. and a shot was fired.

6.30 None of these officers have stated anywhere in their affidavits or in their cross-examination, (Superintendent of Police, Border) that they actually saw firing by Mukund Baruah and also that this firing was aimed at Deputy Commissioner, Wokha. Deputy Superintendent of Police, Nagaland Armed Police who in Annexure 25 and Annexure 28 is specifically mentioned as being present at the spot along with Deputy Commissioner, Wokha when the seized material was discovered, was not produced for cross-examination. His affidavit on this point says that he had followed Deputy Commissioner at some distance to the spot and when Deputy Commissioner lifted one of the posts and showed it to them, just then some one from the trench nearby fired a shot, just then Mukund Baruah was seen running away and taking position about 20 feet outside the fencing of the Police Station. Therefore, this officer, Deputy Superintendent of Police who was present at the spot with Deputy Commissioner, Wokha is only in a position to say that "someone from the trench nearby fired a shot."

6.31 According to Annexure 28, which is Deputy Commissioner, Wokha's own report to the Commissioner, Nagaland, dated 24th April, Superintendent of Police, Wokha and Superintendent of Police (Border) had followed behind when he accompanied by Deputy Superintendent of Police, Nagaland Armed Police had gone to the spot where he found the seized material. As has been indicated above, there are some contradictions here but this statement has certainly been made in this document. This would mean that Superintendent of Police, Wokha was present at the time that the seized material was discovered and, therefore, when the shot was fired. In his affidavit, however, Superintendent of Police, Wokha stated to the contrary. According to him, Deputy Commissioner, Wokha went out from the office room of the Police Station probably to answer the call of nature, as he puts it, and was followed by the 2nd officer i.e., Digen Sharma soon afterwards but he remained inside the room. After some time he heard the sound of firing. He thus knows nothing about who fired and whether the shot was aimed at the Deputy Commissioner.

6.32 Superintendent of Police (Border) also in his affidavit says that he had stayed back in the office

room of the Police Station and then heard the sound of firing upon which he rushed out. He, therefore, knows nothing about who fired and at whom. Sub-Divisional Officer, Bhandari's affidavit was only to the effect that he adopted the affidavit filed by Deputy Commissioner, Wokha in so far as the same related to the acts done by him. In his cross-examination he says that he did not himself see who fired at the Deputy Commissioner. Deputy Commissioner, Wokha had told him that an armed man had fired but he did not know whether this was actually aimed at him. The Sub-Divisional Officer, therefore, is also not in a position to confirm that he himself actually saw who fired and at whom.

6.33 According to the statement contained in the affidavit of Border Magistrate, Nagaland, after going to the Merapani Police Station with Deputy Commissioner, Wokha, he had after some time gone back to the Nagaland Inner Line Permit Check Gate to have drinking water as he was feeling thirsty. It was while he was having water there that he heard a firing sound in the Assam Police Station. He rushed to the Police Station and on enquiry from the Deputy Superintendent of Police, Nagaland Armed Police was told that Deputy Commissioner, Wokha had been fired upon by one of the Assam Police officials. According to his own showing, therefore, he was not even at the Police Station when the shot was fired.

6.34 The only official who has acknowledged being eye-witness to the actual firing was the Officer-in-Charge Bhandari Police Station, Z. Lotha. He says in his affidavit that he accompanied Deputy Commissioner, Wokha and other officers to the Police Station. Deputy Commissioner, Wokha told the 2nd Officer Commanding about the purpose of his visit and so on. The Deputy Commissioner, Wokha went out of the office room of the Police Station, he and Digen Sharma, the 2nd Officer Commanding also left the Office room. Deputy Commissioner, Wokha found the iron posts under cover of blankets. He lifted the blanket and exposed the iron posts. Meanwhile, according to Officer Commanding, Bhandari Police Station :

"As we were approaching the hidden fencing material, Mr. Mukund Baruah Platoon Commander, commanded all his men to load their arms who immediately loaded their arms and took firing position in trenches and bunkers surrounding the Police Station. As the Deputy Commissioner took one of the iron posts to show to the 2nd Officer Commanding of Assam Police Station, Shri Sharma, the said Mukund Baruah fired from his sten gun at Deputy Commissioner, Wokha from a close range which however, narrowly missed the Deputy Commissioner".

In his cross-examination he stated as follows :

"I was standing outside the Merapani Police Station office on the 22nd of April when Deputy Commissioner and others had gone there. Deputy Commissioner came out and went towards the barracks. I also followed

him. Deputy Commissioner's body guard, 2nd Officer Commanding Sharma also followed Deputy Commissioner with me. Nagaland Armed Police Coy. Commander was coming but at a distance. Deputy Commissioner lifted the fencing material and displayed it showing it to 2nd Officer Commanding Sharma. The moment this was done, there was firing. 2nd Officer Commanding Sharma was on my left and Deputy Commissioner, Wokha was in front of me. Deputy Commissioner must have been about 3-4 feet away from me. Deputy Commissioner's body guard was in front of him a little towards the left. I heard Mukund Baruah ordering loading of weapons to his men. I also saw Mukund Baruah during this time. Mukund Baruah was at a distance of about 10—15 feet from me. There were 10—15 persons in the trench and their heads could be seen. These 10—15 people loaded their weapons. Then said I cannot say how many of them loaded their weapons. Mukund Baruah was in standing position in the trench. His sten gun was pointed towards the Deputy Commissioner. The weapons of the other 10—15 people were also pointed inwards into the Police Station and towards the Deputy Commissioner. This order of loading, pointing took about 2 minutes. The Deputy Commissioner's body guard kept standing but did not do anything. I cannot say what weapon he had, he was in civil dress. Deputy Commissioner's body guard was not in uniform. The bullet did not hit Deputy Commissioner. I do not know in which direction it went. I heard the sound of the bullet travelling in high velocity. I myself saw the firing but did shout as to who had fired. I was a little frightened when I saw the firing. I was a little frightened earlier when I saw this Assam Police loading their weapons. I was at the Police Station for about an hour after the firing. Deputy Commissioner, Wokha had asked a Central Reserved Police Force, Deputy Superintendent of Police to go and get Mukund Baruah. I do not remember if this Deputy Superintendent of Police went or not. I knew Mukund Baruah by sight before 20th of April and on the 20th I came to know his name as well. I did not suggest to Deputy Commissioner or to other officers that we should look for the bullet.

I registered a case of this incident at Bhandari Police Station and I myself lodged and wrote the first information report. This first information report is in English. A copy of this First Information Report has not been submitted to the Commission. What I heard and saw of this incident, I wrote in the First Information Report. The Information Officer is one Shri Bora. He is still in service but has, on promotion, gone

to Nagaland Armed Police. The investigation is still with him. I do not know what happened to this case. I did not request Assam Police to arrest Mukund Baruah. There are many other cases like this which have not been disposed of and nothing further is likely to be done because all formalities cannot be completed. This case will also meet the same fate. In order to decide the jurisdiction of the court, I will refer the case to Superintendent of Police, Wokha. I can take cognizance of this incident which took place at Merapani because it took place in my presence. The Police Station towards the Nagaland side related to the Inner Line Permit. The fencing matter on the 20th April would be in the jurisdiction of Police Station, Bhandari, that is why we registered the case. The I.O. has not recorded my statement in the case lodged by me relating to 22nd April incident. I do not know whether the I.O. recorded Deputy Commissioner, Wokha's statement. It is incorrect that what I have said about Mukund Baruah firing in the direction of Deputy Commissioner, Wokha is false. I saw it with my own eyes".

6.35 The only witness on the Assam side could be Digen Sharma, the 2nd Officer Commanding of Merapani Police Station. He has not supported the version given by Nagaland in his affidavit. On the contrary, he supports the Assam version. The only eye witness is therefore the Officer Commanding, Bhandari Police Station—Deputy Commissioner, Wokha himself only basing his allegation on his presumptions. As to the value of Officer Commanding, Bhandari's evidence, there are some doubts as to whether he was present at the spot at all. It has been contended on behalf of Assam that not only in the contemporaneous messages exchanged between different levels in Nagaland but also in the affidavits filed by Nagaland, both State as well as individual, there is no mention of Officer Commanding, Bhandari being part of the group of officers who had accompanied Deputy Commissioner, Wokha from the Inner Line Permit Check-Gate to the Merapani Police Station. The Nagaland affidavit describes the party as consisting of Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Border Magistrate, Nagaland, Superintendent of Police (Border), Nagaland, Deputy Superintendent of Police, Nagaland Armed Police and Sub-Divisional Officer, Bhandari. Annexure 25 refers to Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Superintendent of Police (Border), Sub-Divisional Officer, Bhandari and Border Magistrate, Merapani. Dy. Superintendent of Police, Nagaland Armed Police was also apparently a member of the party as he was later on mentioned in this message. The Sub-Divisional Officer report at Annexure 26 gives the composition of the party as Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Superintendent of Police (Border), Border Magistrate, Nagaland, Dy. Superintendent of Police, Nagaland Armed Police and Sub-Divisional Officer, Bhandari. Deputy Commissioner's own report at Annexure 28 describes the party as consisting of Deputy Commissioner, Wokha, Superintendent of

Police, Wokha, Superintendent of Police (Border), Sub-Divisional Officer, Bhandari, Border Magistrate, Nagaland, Deputy Superintendent of Police, Nagaland Armed Police is also mentioned later on. The officers mentioned in Shri Lalthara's affidavit are: Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Sub-Divisional Officer, Bhandari, Border Magistrate, Merapani and Deputy Superintendent of Police, Nagaland Armed Police. Similarly, affidavits of Superintendent of Police (Border) and Superintendent of Police, Wokha make no mention of the presence of Officer Commanding, Bhandari Police Station, Deputy Superintendent of Police, Nagaland Armed Police who is a somewhat lower ranking officer and would be expected to give the composition of the party in detail to include lower level officers is very specific about the composition of the party when he says in his affidavit that—

“Our party consisted of Deputy Commissioner, Wokha, Superintendent of Police, Wokha, Superintendent of Police (Border), Sub-Divisional Officer, Bhandari, Border Magistrate, Nagaland and myself. There were also two personal body guards, one each of Deputy Commissioner and Superintendent of Police with pistols only.”

6.36 Even at the stage of appearance before the Commission for evidence, the various Nagaland officers made no mention of Officer Commanding, Bhandari except Superintendent of Police (Border). He says that “when I came out of the office room I saw some commotion. Deputy Commissioner was there, Superintendent of Police, Wokha was there, Dy. Superintendent of Police, Nagaland Armed Police was there, I think Officer Commanding, Bhandari Police Station was also there”. After referring to the presence of Officer Commanding, Bhandari in this uncertain way, he then says “Officer Commanding, Police Station, Bhandari told me that he had with his own eyes seen this Assam Battalion Sub-Inspector fired at the Deputy Commissioner, Wokha.”

6.37 The position that emerges is therefore somewhat confusing. On the one hand there is a total lack of mention of Officer Commanding, Bhandari not only in the contemporaneous messages which would be expected to name all those concerned but also in the various Nagaland affidavits. On the other, there is the specific statement of Z. Lotha, Officer Commanding, Bhandari Police Station on oath that he was present and saw the actual firing. Some support to this is also lent by the statement made by Superintendent of Police (Border) in his cross-examination and which has been discussed above. Another document to be found in the Nagaland file No. BA-5/1/85, report of the Dy. Inspector General of Police (Border), Nagaland, Shri Shurhiu on the incidents of 20th and 22nd April, will be useful in this regard. At the time that this incident occurred Shri Shurhiu was on leave and was specially recalled after this incident and asked to enquire into the matter. A reading of his reports shows that it is largely based on the version given by the principal actors in the episode, and that there was no formal independent inquiry made by him. Even

with this, however, he says on the point under consideration that—

“While everybody were looking at the seized materials, ABSI Maken Bora fired his Sten gun in the direction of the D.C. it though was seen by the O.C. Bhandari P.S. that the firing was aimed above. No other person did see actual firing except by the O.C., Bhandari P.S. though many senior officers were present.”

He goes on to say that “the firing was done by ABSI Maken Bora only. The actual intention of firing by the ABSI could not be ascertained definitely as to whether it was intended to fire at the Deputy Commissioner or to threaten the Nagaland officials.”

6.38 The report is dated 26th April, 1985 and there is no reason to believe that the clear statement on the presence of Officer Commanding, Bhandari should not represent the truth. At the same time, going by the same report it is clear that the finding of Shri Shurhiu was that while firing was by Mukund Baruah it was not aimed at Deputy Commissioner but was aimed higher. This finding is based on what was indicated to Shri Shurhiu by none other than the only eye-witness, Officer Commanding, Police Station, Bhandari, who at this stage in his affidavit says that Mukund Baruah fired at Deputy Commissioner, Wokha from a close range. The point that the shot was not aimed at the Deputy Commissioner would also get support by the oral evidence of Officer Commanding, Bhandari when he says in his cross-examination that he himself saw the firing but “did shout as to who had fired”.

6.39 There are two points made by the Nagaland side to lend support to the contention that the firing was a deliberate act. These points are: first, that after the firing this Assam Battalion Sub-Inspector fled away from the trench still threatening to shoot down anyone attempting to come near him and escaped through a nullah. The second, that Shri Chander Bhan, Deputy Superintendent of Police, 48, Central Reserve Police Force tried to bring him back for discussion and examination of his sten gun but he refused and in fact even threatened Chander Bhan.

6.40 These points have been clearly made in the main Nagaland affidavit and also in the affidavits of individual officers like the Deputy Commissioner (Wokha), Superintendent of Police (Border), Nagaland, Superintendent of Police (Wokha), etc. It has also been stated on behalf of Nagaland that the whole incident including Mukund Baruah threatening the Nagaland officials with his sten gun, escaping through a nullah, and even threatening Chander Bhan who had gone to bring him back, was witnessed by Chander Bhan, who in fact when to call Mukund Baruah back. Nagaland, however, made no attempts to secure the presence of Shri Chander Bhan, Deputy Superintendent of Police, 48, Central Reserve Police Force for

oral evidence before the Commission. The Commission, therefore, called him on its own as a Commission witness. His entire evidence is quoted below :—

“XXX BY COMMISSION

I was posted in Odali pathar in year 1985, i.e. from 9-1-1985 to 18-1-85 and 22-3-85 to 3-5-1985.

I was at Merapani on 22nd of April, 1985. There was a section of CRPF stationed at Merapani Police Station and I had gone for general check up. I had arrived at the Police Station by about 11 A.M. I was there till about 4 P.M. DC, Wokha, SP, Border and SDO, Bhandari had come to Police Station. The SI of the ILPCG and the NAP Co Commander had subsequently joined them in the Police Station. These people were in the Police Station Office. Then DC, Wokha, SDO, Bhandari and SI of the ILPCG came out and started taking a round of the PS campus. I and SP, Border, Mr. Lotha remained in the office room. We heard the sound of the firing of one round. We came out of the office and found DC, Wokha standing about 50 yds. away. The situation was tense, the AP were in the Stand to position and after this firing the NAP at the ILPCG had also assumed the stand to position. I did not see the actual firing because I was in the office room. I cannot say who fired or at whom this firing was done or what weapon was used because I did not see all this being in the office room, but the direction of the sound of fire indicated that came from Assam side. Since I had not seen the firing and who had fired I cannot identify the person. I checked the weapons of all the AP available there, no empty case was recovered.

It is wrong that I along with 2nd O/C Raman Hazarika had tried to bring Mukund Baruah for discussion and examination of his sten gun. DC, Wokha was with us, when I was checking weapons. Mukund Baruah was not amongst the AP personnel who were checked by us. Mukund Baruah is a SI in 3rd AP Bn. The Merapani BOP located in Merapani bazar is manned by units of 3rd AP. I cannot say whether Mukund Baruah was part of this unit at Merapani BOP. I am not aware of any attempt by Deputy Supdt. of Police NAP to approach ABSI on duty with intention to snatch his sten gun forcibly.

NAP had been deployed in front of the PS next to the ILPCG and on the side facing the foothills. It would not be correct to say that AAP and the CRPF had surrounded the Merapani Police Station and not the NAP. Firstly, the PS was not surrounded by one force as such NAP were where I

have already indicated; AAP had also been deployed on the other two sides of the PS namely, the side facing MPN bazar and the side facing the paddy fields next to the Merapani U/ghat road.

XXX by Nagaland Counsel

When I came out of the office room of the PS on hearing the sound of fire, I did not see anybody running away with the sten gun along the nullah. Nor was anybody armed with sten gun outside the PS and near the nullah threatening me or DC, Wokha with his sten gun saying we should not go near him. NAP were deployed on the two sides of the PS as indicated by me earlier in my evidence after the firing incident.

I do not know O. C. Bhandari, I therefore cannot say whether he was present at the PS along with the other NI officers.

By Assam Counsel

When I was checking the weapons, of the AP, along with DC, Wokha SP, Border, Nagaland was also with me.”

6.41 The evidence of Shri Chander Bhan does not support the Nagaland position that he had witnessed the entire incident including the firing at Deputy Commissioner, Wokha by Mukund Baruah. He did not see the actual firing because he was in the office room; he cannot say who fired or at whom the firing was done and what weapon was used. All that he could say was that the direction of the firing indicated that it came from the Assam side. He cannot identify the person who fired. He did not try to bring Mukund Baruah for discussion and examination of his sten gun. He did not see anybody running away with the sten gun along with nullah nor was anybody armed with the sten gun outside the Police Station in the nullah threatening him or Deputy Commissioner, Wokha with his sten gun saying that they should not come near him.

6.42 At best, therefore, the evidence before the Commission with regard to the Nagaland version of the firing incident suggests the probability of the shot having been fired by Mukund Baruah. There is no indication whatsoever that this firing was deliberate or was aimed at Deputy Commissioner, Wokha. Before, however, coming to a firm conclusion on this point, it will be necessary to consider the evidence coming from the Assam side in support of their contention that this was a case of accidental firing and that the firing was not by Mukund Baruah but by a GF Rifleman Prafulla Bora.

The Assam Case

6.43 Again, starting with contemporaneous messages, the first report is contained in a message of Addl. Deputy Commissioner (Border) sent to Deputy Commissioner, Jorhat on the 22nd April at pp. 53 to

55 of A VI. Copies were repeated to Commissioner, Upper Assam Division, Deputy Inspector General of Police (Eastern Range), Jorhat and the State Government. It must be remembered here that at the time of the firing incident, the only Assam Officers present at the Police Station were 2nd officer Digen Sharma, Assam Battalion Sub-Inspector, Mukund Baruah and other police personnel. No senior officers were present. It was only after the incident when the matter was reported to Golaghat etc. that the Superintendent of Police, Jorhat and the Additional Deputy Commissioner, Border had come to Merapani Police Station in the evening. They discussed matters with the Deputy Commissioner, Wokha who was still there awaiting their arrival. Reference to all this has been made in this message of Additional Deputy Commissioner (Border).

The message is reproduced below :—

“Today at about 1100 hrs. information was received by Merapani Police Station to the effect that Nagas would be coming to the Police Station Merapani to forcibly take back the iron posts which were seized by Merapani Police Station on 20-4-85. The Merapani Border Out Post was accordingly alerted. At about 1115 hrs Deputy Commissioner, Wokha Nagaland/SP, Wokha/SP, Border, Nagaland along with SDO(C), Bhandari, Magistrate Merapani Nagaland and Dy. SP, NAP, Nagaland along with one Coy of NAP from foothills gathered near Quarantine check post in front of Merapani Police Station. After some time at about 1145 hrs. DC, Wokha with above officers and some armed civilians with guns entered the PS compound. The Police Station force came to stand to position to pay compliments to DC, Wokha which is the usual practice in police. Immediately it was found that one Coy of NAP had surrounded the entire Police Station compound and took position and hence the guards continued in ‘Stand to’ position. DC, Wokha started abusing and charging S. I. Shri D. Sharma, Second Officer, Merapani Police Station in presence of above officers for seizure of the iron fencing posts with an intention to taking fencing posts from police custody. DC, Wokha continued shouting on Shri Sharma SI and started checking the rooms and barracks of Merapani Police Station forcibly without permission from any one. It can be mentioned that on 20th April in the presence of DIG(ER), Jorhat/SDO(C) Bhandari had agreed that the issue would be sorted out at Commissioners’ level. Today DC, Wokha in clear violation of above agreement tried to take posts by force. While searching the Police Station in an unauthorised way DC, Wokha found iron posts and lifted one iron post with intention to take it forcibly. S.I. Digen Sharma protested and did not allow D.C., Wokha to take it by force. Here it is to be mentioned that

Deputy Supdt. of Police, NAP, approached the ABSI on duty at the Police Station with intention to snatch away the sten gun forcibly. Dy. S.P., NAP was told by ABSI not to do so. After that DC, Wokha and others from Nagaland came to the room of O.C. and kept shouting. In the meantime the whole Police Station was surrounded by NAP and even reinforcement sent from Merapani BOP was not allowed to go to Police Station. On receipt of information, senior officers including myself/SP, Jorhat Co. 48, CRPF/Sector Commander/SDO, Golaghat/SDPO/Additional SP, Jorhat/E.A.C.(B), Jorhat rushed to the spot. During discussion DC, Wokha raised allegation that today he was fired at by ABSI on duty at Police Station. SP, Jorhat asked A.S.P., Jorhat to enquire into and do physical verification of arms and ammunitions and these were intact except that one ballistic cartridge was accidentally fired by GF Rifleman while getting ready at the sight of NAP all surrounding the Police Station and taking positions with their arms including automatic weapons. However, according to ASP, Jorhat, GF, Rifle was not fitted with discharger cup and as such firing of cartridge was purely accidental and harmless. During discussion it was agreed that forces should be withdrawn immediately and the matter would be sorted out at a meeting of officers of both States. At about 1900 hrs. forces were withdrawn though reportedly some NAP men are still in the Quarantine check post. In the meantime complainants have been received from Non-Nagas inhabitants of the area bordering foothills that their houses have been heavily pelted stones cases are being taken by police in this connection. Reinforcement has been kept at Merapani BOP and they have been told to execute patrolling in the neighbouring areas to maintain watch to prevent any untoward incident. Sector BOPs have been alerted by DIG, Golaghat, OS/U/Watch and U/Control.”

6.44 A similar report was sent by SP, Jorhat to Police Headquarters at Guwahati and can be seen at Annexure C 19 of A-II. According to this report, on arrival of Superintendent of Police, Jorhat, Addl. Deputy Commissioner (Border) etc. at the Merapani Police Station, Deputy Commissioner, Wokha had alleged that he was fired at by Assam Battalion Sub-Inspector on duty at the Police Station. Additional Superintendent of Police, Jorhat was asked by the Superintendent of Police, Jorhat to enquire into the matter and do physical verification of arms and ammunitions. After inquiry and physical verification it was found that all arms and ammunitions were intact except that one ballistic cartridge was accidentally fired by GF Rifleman while he was getting ready at the site of Nagaland Armed Police surrounding the Police Station and taking position with their arms

including automatic weapons. The GF Rifle was not fitted with discharger cup and as such firing of ballistic cartridge was said to be purely accidental and harmless.

6.45 There is then a message at Annexure C-20 in A-II from the Inspector General of Police (Border), Guwahati, Assam to Dy. Inspector General of Police (Eastern Range) referring to firing of ballistic cartridge accidentally in Merapani Police Station while the staff was hurriedly getting ready after seeing the Nagaland Armed Police force surrounding the Police Station compound. Deputy Inspector General (Eastern Range) was directed by the Inspector General of Police to cause a thorough inquiry to be made by the Superintendent of Police (Jorhat) himself. A factual and detailed report was needed as to how this ballistic cartridge was accidentally fired. The report was to be sent by special messenger to reach the Inspector General of Police (Border) by the 27th April, 1985.

6.46 The report sent by Dy. Inspector General (Eastern Range), Jorhat in answer to his direction is dated 30th April, 1985. It is actually addressed to the Director General of Police and a copy of it was endorsed to the Inspector General of Police (Border). It enclosed a copy of the inquiry report prepared by the Superintendent of Police, Jorhat which is also dated 30th April, 1985. The two reports may be seen at Annexure C-20 pages 116/117 and C-20 pages 118 to 120 in A-II.

6.47 Superintendent of Police's report is entitled "Enquiry Report about the incident when one ballistic cartridge went off accidentally by Constable No. 260 Prafulla Bora of 3rd Assam Police Battalion (G. F. Rifleman)". The first two paragraphs give the general background of the incidents of the 20th and 22nd April. Paragraph 3 refers to discussion held between Deputy Commissioner, Wokha on the one hand and Additional Deputy Commissioner (Border), Jorhat on the other at about 7.00 P.M. at Merapani. Deputy Commissioner, Wokha alleged that he was fired at by Assam Battalion Sub-Inspector Mukund Baruah. The report then says that Superintendent of Police, Jorhat got the matter thoroughly enquired into and the facts revealed were as follows :—

- (a) D.C. (Wokha) had said that one Makhan Baruah had fired at him. There was no officer by that name. The Assam Battalion Sub-Inspector was Mukund Baruah. No ammunition had been lost by him even accidentally. All his sten gun ammunition was found intact.
- (b) The weapons of 9 armed police personnel including that of Assam Battalion Sub-Inspector Mukund Baruah were checked and it was found that a round had been fired from the GF Rifles of Constable No. 260, Prafulla Bora which contained one empty case.
- (c) Nagaland Armed Police personnel had surrounded Merapani Police Station and the Assam Police started taking safe position for their self-defence. While getting ready in

a hurry, one ballistic cartridge went off purely accidentally from the rifle of Prafulla Bora. This rifle was not fitted with discharger cup and this was verified beyond doubt and as such it was innocuous. In any case Prafulla Bora was not near the Deputy Commissioner, Wokha.

6.48 The report concluded by saying that it was clear that Deputy Commissioner, Wokha along with others and supported by Nagaland Armed Police had come to the Merapani Police Station with ulterior motives to snatch away the seized iron posts forcibly. They were ready to attack Merapani Police Station as was obvious from the Nagaland Armed Police surrounding the Police Station with automatic weapons etc. The Assam Police personnel coming to 'stand to' position was only to pay compliments to Deputy Commissioner, Wokha initially and later in self-defence and for the protection of Merapani Police Station.

6.49 Deputy Inspector General of Police (Eastern Range) in forwarding the report of Superintendent of Police agreed with the conclusion. He said that he had also looked into the matter and the allegations of Deputy Commissioner, Wokha about the Assam Police Battalion personnel firing at him were baseless and highly exaggerated. He felt that the accidental firing by G. F. Rifleman was due to a certain amount of nervousness on his part seeing that the Nagaland Armed Police had surrounded the Police Station and also seeing armed civilians within the Police Station compound. He confirmed that the G. F. Rifle was not fixed with the discharger cup nor loaded with a grenade. Assam Battalion Sub-Inspector, Mukund Baruah had not fired even a single round from his sten gun and a physical verification showed that he had all the ammunitions intact.

6.50 As has been indicated earlier, the only two officers from the Assam side who were present at the Police Station at the time of firing were Assam Battalion Sub-Inspector Mukund Baruah of 3rd Assam Police Battalion and the Second Officer of Merapani Police Station, Digen Sharma.

6.51 Mukund Baruah, has stated in his affidavit that on receiving information he arrived at the Merapani Police Station at about 1140 hrs. and found Deputy Commissioner, Wokha and other officers and Nagaland Armed Police personnel in a very excited and angry mood. Deputy Commissioner (Wokha) started checking rooms, barracks etc. found the seized material and even wanted to take it away forcibly. Deputy Superintendent of Police, Nagaland armed police tried to snatch away his sten gun. He then adds that while the Assam Police Battalion personnel stationed at the Merapani Police Station came to 'Stand to' position with a view to pay respect and compliments to the Nagaland high officials, Shri Prafulla Bora, Constable No. 260, accidentally fired one ballistic cartridge from his GF rifle. It was not fitted with discharger cup and as such it was absolutely harmless. The bullet had gone upwards without causing any harm to anybody.

6.52 Digen Sharma, the 2nd Officer Commanding of Merapani Police Station, says that in view of the situation that had developed he sent a requisition to the rear Border Outpost for force for the protection of the Police Station and Mukund Baruah had come as a result with his staff. Deputy Commissioner, Wokha started checking rooms and barracks, found the seized material and wanted to take it away forcibly. He then says that while all the Assam Police Battalion personnel stationed at Merapani Police Station came to 'Stand to' position with a view to give respect and compliments to the high officers, Prafulla Bora, Constable No. 260, accidentally fired one ballistic cartridge from his GF rifle. It was not fitted with a discharger cup and as such it was absolutely harmless. It had gone upward without causing any harm to anybody.

6.53 It will be seen that the language used by these two officers in their affidavits is almost identical and nowhere do they say that they themselves saw the rifle of Prafulla Bora going off accidentally.

6.54 Superintendent of Police, Jorhat, Shri A. K. Mallick, and the Additional Deputy Commissioner (Border), Shri D. K. Gohain, came to the police station towards the evening when informed of the situation that had developed there. They are not eye-witnesses and the messages sent by them at C-19 of A-II and at pages 53-55 of A-VI are based on what they were told and the discussion that they had with Deputy Commissioner (Wokha) and his officers on arrival.

6.55 Superintendent of Police, Jorhat has stated in his affidavit that on receiving information he rushed to Merapani at about 2 P.M. He saw that the Police Station had been surrounded by Nagaland Armed Police personnel. He also found the Coy. Commander of Central Reserve Police Force namely Chander Bhan, Additional Superintendent of Police, Golaghat and Sub-Divisional Police Officer, Golaghat. They held discussions with Deputy Commissioner, Wokha, Superintendent of Police, Border, Nagaland, Sub-Divisional Officer, Bhandari, Dy. Superintendent of Police, Nagaland Armed Police, in the presence of Additional Deputy Commissioner, Border, Golaghat. These discussions were about the withdrawal of Nagaland Armed Police. But he was also told on arrival by Deputy Commissioner, Wokha that he was fired at by the Assam Battalion Sub-Inspector of Police on duty. He immediately held an inquiry and physical verification of the arms and ammunition of the Assam Police personnel in the Police Station. It was revealed that a ballistic cartridge from the gun of a constable while he was in 'Stand to' position, got fired accidentally.

6.56 More or less the same averments have been made in his affidavit by the Additional Deputy Commissioner (Border).

6.57 Since Deputy Inspector General of Police (Eastern Range), Superintendent of Police, Jorhat and Additional Deputy Commissioner, Border, Jorhat

were not present at the time of the incident, the Assam version will have to be examined on the basis of the contemporaneous messages sent, the inquiry report of Superintendent of Police, Jorhat as forwarded and supported by Deputy Inspector General (Eastern Range) and what emerges in the cross-examination of Superintendent of Police (Jorhat) in particular. The evidence of Chander Bhan, Deputy Superintendent of Police 48 Central Reserve Police Force, who was present at the time of the incident will be of considerable value in this regard.

6.58 Deputy Superintendent of Police, Chander Bhan of 48 Central Reserve Police Force who can be considered an independent witness was present at the time of the incident unlike Superintendent of Police (Jorhat) or Additional Deputy Commissioner (Border). Admittedly, he did not see the actual firing and, therefore, in his evidence has said that he cannot say who had fired. However, after the firing, he immediately checked the weapons of all the Assam Police personnel available at the Police Station and no empty case was recovered. In other words, all the weapons that he checked were fully loaded and had, therefore, not been fired. He also says that Mukund Baruah was not amongst the Assam police personnel who were checked by him.

6.59 By Assam's own showing Prafulla Bora was present at the Police Station at the time of the firing. In fact it was his rifle that is supposed to have gone off accidentally. If Chander Bhan checked the weapons of all those who were present at the Police Station immediately after the incident, obviously the weapons of Prafulla Bora was also checked. Since according to Chander Bhan all weapons checked were fully loaded, the weapon of Prafulla Bora would also have been loaded. It had not, therefore, been fired.

6.60 This checking of weapons by Chander Bhan was immediately after the incident of firing. The checking done under the supervisions of Superintendent of Police (Jorhat) was much later in the day at about 7 P.M. Superintendent of Police, Jorhat's statement in cross-examination will be of relevance here. He says that when he arrived at the Merapani Police Station he found the Assam armed police personnel present there in about one platoon strength. In addition the staff of the Police Station was also there constituting about 8-9 persons. He did not remember whether a Platoon Commander, i.e., Assam Battalion Sub-Inspector, Mukund Baruah was there. He had called the Platoon Commander at the time of verification of arms. He had called him from the rear Border Out Post of Merapani which is at some distance from the Merapani Police Station and this was at about 7 O'clock. He goes on to say further:

"...The first thing that occurred to me was to remove Assam Armed Police and Nagaland Armed Police. Then I did call Mukund Baruah and asked him. This was about 3 hours after I had arrived at the Police Station. It did not occur to me that it was odd that the Platoon Commander was not present there because there were lot of

including automatic weapons. The GF Rifle was not fitted with discharger cup and as such firing of ballistic cartridge was said to be purely accidental and harmless.

6.45 There is then a message at Annexure C-20 in A-II from the Inspector General of Police (Border), Guwahati, Assam to Dy. Inspector General of Police (Eastern Range) referring to firing of ballistic cartridge accidentally in Merapani Police Station while the staff was hurriedly getting ready after seeing the Nagaland Armed Police force surrounding the Police Station compound. Deputy Inspector General (Eastern Range) was directed by the Inspector General of Police to cause a thorough inquiry to be made by the Superintendent of Police (Jorhat) himself. A factual and detailed report was needed as to how this ballistic cartridge was accidentally fired. The report was to be sent by special messenger to reach the Inspector General of Police (Border) by the 27th April, 1985.

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that my inquiry was superficial and perfunctory and based on surmise. It would be possible for Mukund Baruah to have got bullet from one of his fellows while he was away.....".

6.63 It is clear from this that a GF Rifle has a safety catch. It cannot be fired unless the safety catch is in off position. In a stand-to position, when the GF Rifle is held in kneeling position, a deliberate action of pulling down the trigger has to be done before it can be fired. Also, in a stand-to position, the safety catch of the weapon is in a position where the weapon cannot be fired till that position has been changed, and this change is made just before the weapon has to be fired. This would mean that in a 'stand-to' position the safety catch is on. In other words, the weapon cannot be fired. Unless Prafulla Bora had meant to fire the weapon, he would not have changed the position of the safety catch so that the weapon could fire. In other words, the rifle could not have gone off accidentally or due to nervousness. Similarly, the rifle could not have gone off while Prafulla Bora was in the process of fitting the discharger cup to the rifle.

6.64 It is also clear from the evidence of Superintendent of Police, Jorhat quoted above that no regular inquiry as such was made. Deputy Commissioner, Wokha had made specific allegations and it was necessary that the matter was inquired into detail. Even assuming that Prafulla Bora had accepted that his rifle had gone off accidentally, it was necessary that Deputy Commissioner, Wokha's allegations be gone into. It has been admitted by Superintendent of Police, Jorhat that after Inspector General of Police (Border) had asked for a regular inquiry by the Superintendent of Police himself, he had not made any fresh inquiry but had more or less gone by the inquiry made on the 22nd April. It was this inquiry that formed the basis of his report of 30th April.

6.65 It is also rather odd that the two reports dated 22nd April, 1985 sent by Superintendent of Police, Jorhat at C-20 of A-II and by Additional Deputy Commissioner (Border) at pages 53—55 of A-VI are almost identically worded. In his cross-examination, Superintendent of Police, Jorhat says that after inquiry on the 22nd evening at Merapani Police Station, he does not remember whether Additional Deputy Commissioner, Border was with him when he returned to Golaghat. He does not remember whether he saw him at all that evening. On the other hand, he says that if he recollect correctly he saw him that evening at Golaghat. He is quite clear that he had sent his report on 22nd April independently without consulting with Additional Deputy Commissioner (Border). Considering that the two reports are almost identical, it would appear that these are really one report jointly drafted by the two officers. The fact that the name of the GF Rifleman is not mentioned is significant considering the other points that have been discussed above and would tend to support the impression that Prafulla Bora was not involved in the firing at all. There was no accidental firing from his rifle.

Conclusion

6.66 Considering the evidence available to the Commission from both sides, Assam and Nagaland, it will have to be held that the Assam version of the firing incident is incorrect. The GF Rifle of Prafulla Bora did not figure in this firing incident at all and to that extent the reports of Superintendent of Police, Jorhat and Deputy Inspector General of Police (Eastern Range) do not give the correct position.

6.67 In all probability, the firing was from the Sten gun of Mukund Baruah. At the same time, there is absolutely no question of his deliberately aiming at or firing at Deputy Commissioner, Wokha. If one is to go by the balance of probabilities, considering the situation prevailing at the time at the Merapani Police Station, this sten gun was either deliberately fired into the air or went off accidentally.

6.68 The Commission would like to refer here to the point made by the Nagaland side that in this whole episode of the 22nd April, it was not the entry of Deputy Commissioner, Wokha into the Merapani Police Station that added to the prevailing tension and that it was the subsequent firing at the Deputy Commissioner that was really instrumental in doing so. Actually, if one is to identify the single critical act in this entire episode of the 22nd April which added to the tension, it would appear to be the highly emotional reaction of the Deputy Commissioner, Wokha and the equally casual approach of the Assam side.

6.69 The fact that firing had taken place is accepted. It is also accepted that this firing was from the Assam side. The rather excited and emotional response from the Nagaland side can to a certain extent be expected. However, one does not expect that a Deputy Commissioner with a reasonable period of service behind him would paint the kind of a picture that he did through his messages to his Commissioner and to his Government. The Commissioner Nagaland's reaction, as contained in Annexure 21 of A-III could only be based on a very exaggerated account of the incident made available to him. Actually, what one expects of a trained officer holding the position of a Deputy Commissioner is to present a picture which tends to defuse a problem rather than add to it.

6.70 On the other hand, the fact does remain that there was firing from the Assam side. It is immaterial whether it was deliberate, accidental or with a particular purpose. The Deputy Commissioner, Wokha felt that this was deliberate act and in the prevailing situation he expected that the Assam side would show some anxiety to go into the whole thing, make a proper inquiry which naturally would have included taking his statement, the statements of other Nagaland officers, examining the weapon which is supposed to have been fired and so on. This was not done. In fact, the messages sent in reply by Deputy Commissioner, Jorhat and even the Assam Government were somewhat perfunctory and displayed a remarkable degree of unconcern. A more balanced approach from the Nagaland side and a more helpful attitude on the Assam side might have prevented the subsequent course of events.

CHAPTER VII

1. SEQUENCE OF EVENTS LEADING TO THE CONFLICT

2. WHETHER THE CONFLICT AND RESULTANT LOSSES COULD HAVE BEEN AVERTED

The Agreement of 1st May, 1985

7.1 Following the incident of 20th April and then that of 22nd April, both sides had inducted armed police into the area. As has been noted earlier, the Nagaland Armed Police was brought in on the 20th April and further reinforced in the days following. From the Assam side also the Assam Armed Police was brought in into the Merapani Police Station and a situation thus arose where the armed police of the two States was now face to face, one located at the Check Gate and the other at the Merapani Police Station. At this point, therefore, defusing of the situation that had arisen required that the two forces be separated and withdrawn to their earlier positions.

7.2 The fact that the Nagaland Armed Police had been inducted into the Inner Line Permit Check Gate was apparently not in the knowledge of Commissioner, Nagaland. The induction of the Nagaland Armed Police at the Check Gate was done without the orders of the competent authority. It is not clear how things were working at the local and district level but it seems that in theory at least, in the border areas movement or deployment of the armed police forces was governed by the decisions arrived at the meetings of the two Chief Ministers in January 1979 and then at the meeting taken by the Union Home Minister on the 11th April, 1979. It had been decided at these meetings that the overall command of the Central Reserve Police Forces, Assam Rifles, Nagaland Armed Police and the Assam Armed Police would be with the Additional Inspector General of Police, Assam (later Inspector General of Police, Border, Assam). He would be assisted and advised by the Deputy Inspectors General of Police of Nagaland and Assam.

7.3 The Standing Order issued by the Inspector General of Police, Border, Assam—A 1 to A III—describing the operational duties and the responsibilities of border outposts would also be relevant and is as follows :—

“OFFICE OF THE INSPECTOR GENERAL OF POLICE (BORDER) ASSAM

STANDING ORDER NO. 1 OF 1984

Annexure A 1

In pursuance of decision taken on 5/8/83 at Jorhat by the Sub-Committee consisting of Director General of Police, Assam, Inspector General of Police, Nagaland Commissioner, Upper Assam Division, Jorhat and Commissioner, Nagaland,

Inspector General of Police (Border), Assam, after review of all standing orders so far issued to the Sector Commanders in Assam-Nagaland Border and in consultation with Deputy Inspector General of Police, Eastern Range and A.N.B., Jorhat and Deputy Inspector General of Police (Border), Nagaland and in supersession of all previous orders on operational duties and responsibilities of the B.O.Ps in Assam Nagaland Border, orders as follows:—

A. The Sectors and B.O.Ps in Assam Nagaland Border, as already briefed from time to time, will perform the following tasks in their respective jurisdiction.

- (1) Strictly maintain status-quo as on 2nd January, 1979 as per interim agreements between the Chief Ministers of Assam and Nagaland.
- (2) Protect lives and properties of people living, visiting/passing through the area.
- (3) Prevent any one/any agency having no legal authority, from taking the law into its own hand.
- (4) Provide security assistance to public servants having jurisdiction in the area in due discharge of their duties and responsibilities in the area.
- (5) Protect national property including forest wealth of the area.

B. The Sectors and B.O.Ps in Assam Nagaland Border will not carry out any task given by any other authority unless confirmed by Inspector General of Police, Border, Assam or Deputy Inspector General of Police, Eastern Range A.N.B., Jorhat or Deputy Inspector General of Police (Border), Nagaland and unless these are in conformity with the task mentioned in para A above.

C. Generally patrolling in B.O.P. jurisdictions will be carried out on the basis of patrolling programmes prepared and approved by the Sector Commanders in advance. The patrolling programme should be prepared taking into account the developments in different B.O.P. elakas as well as available intelligence. Timings, route and frequency of patrolling should be varied

to retain the element of surprise. However, last minute change in the advance patrolling programme may be made as may be warranted by the situation.

Sd/-

N. N. Chankakoti,
Inspector General of Police (Border)
Assam, Guwahati.

Memo No. IGP/B/50.

Dated Guwahati, the 19th Jan., 1984

Copy to :—

- (1) The Director General of Police, Assam, Guwahati-7.
- (2) The Inspector General of Police, Nagaland, Kohima.
- (3) The Commissioner, Upper Assam Division, Jorhat.
- (4) The Commissioner, Nagaland, Kohima.
- (5) The Deputy Inspector General of Police, Eastern Range & A.N.B., Jorhat. This refers our discussion on 19-1-84 at Jorhat.
- (6) The Deputy Inspector General of Police (Border), Nagaland, Dimapur. This refers our discussion on 19-1-84 at Jorhat.
- (7) The Sector Commander, A.B.C.D.E. & F. Sectors.
- (8) The S.P., Jorhat, Sibsagar, Addl. S.P., Golaghat.

Sd/-

Inspector General of Police (Border),
Assam, Guwahati.

7.4 The Deputy Commissioner, Wokha in his evidence has accepted that he had nothing to do with the Nagaland Armed Police and its deployment, movement, withdrawal etc. was a matter entirely for the police authorities. The police authorities would obviously mean the Deputy Inspector General (Border) or at the very least Superintendent of Police (Border) of the district/border concerned. It seems however that the Nagaland Armed Police contingent that marched into the Inner Line Permit Check Gate on 20th April did so on the authority of only the Company Commander 'E' Company 4th Battalion stationed at the foothills. Immediately thereafter of course the Deputy Commissioner, Wokha, who in his evidence says that he has nothing to do with the Nagaland Armed Police was now intimately involved in its retention at the check gate and was asking for further reinforcement.

7.5 On 20th April, through—Annexure 12 of N VI—Sub-Divisional Officer, Bhandari had informed Deputy Commissioner, Wokha that "all available forces of 4th Nagaland Armed Police, Merapani (were) being deployed to the Inner Line Permit Check Gate for the protection of the Veterinary staff and the seven police personnel." In the same message, he had asked for additional force as reinforcement. He wanted

one platoon to reach Merapani immediately and report to the Border Magistrate and Deputy Superintendent of Police, Merapani i.e., 'E' Company Commander. On the 21st of April, he informed the Deputy Commissioner in—Annexure 14 of N VI—that one platoon of the Nagaland Armed Police had been deployed from the 'E' Company at the foothills. On the 23rd of April through—Annexure 16—Sub-Divisional Officer, Bhandari informed Deputy Commissioner, Wokha that there were reports that the Assam Police and the Assamese public were planning to remove all fencing material at the check gate that night. He requested the Deputy Commissioner to despatch available force for reinforcement that very night without further delay. On the 24th April through—Annexure 17—he reported to Deputy Commissioner, Wokha that the Assam Police had actually attempted to attack the check gate in the morning but they were persuaded to withdraw through Officer-in-Charge, Assam Police at Merapani. This message also refers to raw-material being arranged for the construction of bunkers at the check gate from various villages and Bhandari town and the Deputy Commissioner was informed that construction would be completed that night. Also, that the Nagaland Armed Police personnel despatched from Thizama had reported to Deputy Superintendent of Police, Merapani. Then again on the 28th April in—Annexure 20—Sub-Divisional Officer, Bhandari requested Deputy Commissioner, Wokha to ask Police Headquarters for force from Nagaland Armed Police at Thizama for reinforcement, as there were reinforcements from the Assam side the previous night.

7.6 This will show that Deputy Commissioner, Wokha was aware of the reinforcements at the check gate that were being made. It is also significant that there were movements from Thizama although no indication has been given whether this movement was authorised by the competent authority. The Deputy Commissioner himself in his message of 28th April to the Commissioner at—Annexure 45 of N I—was referring to a platoon of Nagaland Armed Police having been posted at the Inner Line Permit Check Gate. He asked for one Company of Nagaland Armed Police to be sent as reinforcement from 4th Battalion or any other Nagaland Armed Police Battalion wherever the force was available as according to him Assam had deployed "one more additional Company of Assam Armed Police and was practically surrounding the check gate." On the 22nd of April through—Annexure 27 of N I—the Deputy Commissioner had asked for reinforcement after the firing incident on the 22nd "as the situation was dangerous due to large scale deployment of force by Assam in Merapani Area."

7.7 Meanwhile, the two Deputy Inspectors General, Deputy Inspector General (Eastern Range) from Assam and Deputy Inspector General (Border) from Nagaland, met at the Merapani Police Station on the 25th April, 1985. According to the Assam affidavit it was agreed that (i) all Nagaland Armed Police will be withdrawn from Merapani Check Gate leaving behind only those personnel authorised by the Interim

Agreement of 1972; (ii) bunkers erected by Nagaland Armed Police would be dismantled; (iii) any points of conflict would be discussed at the Commissioners' level meeting. At the end of the meeting, however, Deputy Inspector General of Police (Border) refused to sign the minutes saying that the seized fencing material should be returned first. He also said that although he would try to withdraw the Nagaland Armed Police, this would largely depend on the Deputy Commissioner, Wokha as the force was deployed at his instance.

7.8 There was a meeting of the Deputy Commissioners on the 29th April. Here again, according to Assam in their affidavit Deputy Commissioner, Wokha took the stand that he would withdraw the Nagaland Armed Police from the check gate on condition that Assam withdrew the Merapani Police Station and all Border Outposts set up in the Doyang Reserve Forest. Immediately after the meeting, Nagaland Armed Police personnel came to the check gate in trucks loaded with bamboos and wooden poles and started erecting fencing towards the Merapani bazar. They also started roofing two tubular structures on the land of Puwaram Kachari. On the 30th April again the Nagaland Armed Police personnel came with some more material with a view to constructing houses there.

7.9 Nagaland on the other hand say in their affidavit that as tension in the area went on mounting there were no attempts on the part of the Assam Government to defuse the same. Through his message at—Annexure 38 of N I—dated 24-4-1985, Deputy Commissioner, Wokha complained to Deputy Commissioner, Jorhat that the Assam Armed Police and Central Reserve Police Force had surrounded the Merapani Police Station in ambush position in trenches when Deputy Commissioner, Wokha and other officials were visiting the Merapani Police Station. Actually, on the 24th April morning, according to Nagaland at about 11.30 A.M. an attempt was made by the Assam Police to attack the Nagaland Check Gate. This was prevented by persuading the Assam Police Battalion to withdraw through Officer-in-Charge, Police Station, Merapani. On 27th April, 1985, the 1st Battalion of Assam Police was reinforced at Merapani surrounding the Nagaland Armed Police Camp and increasing tension in the area. Assam Police with the help of the Assam public started constructing a building at the Merapani Police Station on the 28th April and also started digging trenches.

7.10 When referring to the meeting of the two Deputy Commissioners of 29th April, the Nagaland affidavit says that the Deputy Commissioner, Wokha maintained that the entire area proposed to be fenced had been under the actual occupation of the Government of Nagaland since 1966 and nobody had ever disputed this possession till 1982. He also said that the Nagaland Check Gate indicated the boundary between the Naga Hills District and Sibsagar District even before Nagaland became a State. The Deputy Commissioner, Wokha protested against the Assam Government's action in setting up a new Police Station

opposite the Inner Line Permit Check Gate and demanded the removal of this police station and all Border Outposts in the area. The relevant message of Deputy Commissioner, Wokha dated 30th April, 1985 to Deputy Commissioner, Jorhat—Annexure 46 of N I—is given below :—

“Reference your signal No. JBA/2/85(PT)/109-92 dated 27th April, 1985 regarding your objection to fencing of Nagaland Police I. L. P. check post at Merapani. As already discussed at Merapani on 29-4-85 the following facts should be considered by Assam Government before levelling such baseless charges. (1) The entire area proposed to be fenced by us have been under our actual occupation for the last 25 years i.e. since 1959. Nobody has ever disputed our possession of this plot till 1982 when Puwaram Kachari of Merapani allegedly filed his claim for the land. This claim coming after 20 years of our occupation could not be entertained or taken seriously by any reasonable authority. In any case Puwaram Kachari should have lodged his complaint to Nagaland Government who are the actual occupants of the land, and we could have verified his claim. (2) This Merapani check gate was in existence even before Nagaland became a State, clearly indicating that this area was considered as the boundary between the then Naga Hills district and Sibsagar district at that time. It implied that beyond this point no unauthorised persons can proceed towards Nagaland or enter Nagaland territory without proper permit from Nagaland Government. And no one even disputed the location of the check gate at this area. Hence this check gate is neither the product of the 1972 Interim Agreement. This check gate had to be specifically mentioned in the 1972 agreement because of the decision taken at that time to withdraw all police posts from the disputed area, making this check gate the only exception. (3) As regards the question of setting up of this check gate to a site 50 yards away towards the foothills, I want to emphasise that no such decision have been taken. This matter is merely put up to the Government we can always shift the fencing as well. The extra effort and expenses involved will be our responsibility and you may not worry about that. (4) The Merapani Police Station of Assam have been strongly objected to by us from the very beginning. The location of B.O.P. in this area was also objectionable as it violated the terms of the 1972 agreement. Conversion of the B.O.P. into Merapani PS was further more objectionable. Setting up a new P.S. towards Nagaland side of our check gate and crossing the check gate itself amounted to a deliberate insult to the Government of Nagaland and the check gate itself. Therefore, if *status quo* and normalcy

is to be restored in this area the simple solution is that Assam should withdraw the Police Station and all B.O.Ps. in this area and allow us to continue to run our check gate in peace as per the terms of the 1972 agreement."

7.11 Whatever the merits of the stand taken by the two sides, it would appear that tension was mounting during these 8 or 10 days from the 20th April to 1st of May when the two Deputy Inspectors General met under Inspector General of Police (Border), Assam. It is clear that the armed police was reinforced by both sides. It is also clear that while the Commissioner, Nagaland had issued directions—Nagaland Exhibit N (13)—to the Deputy Commissioner, Wokha, to withdraw the Nagaland Armed Police stationed at the check gate no such withdrawal was actually effected. Instead, there was a message from Deputy Commissioner, Wokha on 27th April—Annexure 89 of N I—saying that such withdrawal was not desirable and that it should only take place if the Assam authorities removed the Police Station at Merapani opposite the check gate. These messages are reproduced below :—

"W. T. Message

Flash

To : DC WKA/SP WKA

Fm : COMMR KMA

No. CCB3/82(1) Dt. 26-4-85 (.) Understand

some NAP elements have been posted to Nagaland Check Gate at Merapani recently (.) If this is so take imdt steps to withdraw the NAP personnel and confirm (.) The civil police only manning the said check gate should continue to function as usual in spite of provocative activities of Assam authorities (.) Acknowledge."

....

"W. T. Message

To : COMMR KMA

Inf : CHIEF SECY/HOME COMMR/IGP KMA/ADV DMR

Fm : DC WKA

- o. CON 34/1/85-87 Dt. 27/4 (.) Ref Yr S/No CCB-3/82 (1) Dt 26/4 Asking to withdraw NAP personnel from ILP Check Gate and M/Pani (.) We have carefully started and analyse the situation at Merapani (.) It is found that more undesirable consequences will follow if we withdraw our NAP at this critical state (.) If we cannot bargain for withdrawal of all Assam Armed Police Post in the Doyang R. F. cum BOP post located few yards away from our check gate (.) I have given full reason for temporary deployment of NAP at our check gate vide my Sig. No. of even No dated 26/4 (.) If our check gate is attacked and removed by Assam Police and public which appears to be their intention we shall not be

in a position to contain our humiliation and the anger of the public which we are trying our best to control at this stage (.) Para (.) Self will meet DC Jorhat at Merapani on 29/4(.)"

7.12 It is in this atmosphere that the 1st May meeting took place. The Assam affidavit says that the Inspector General of Police (Border) met Deputy Inspector General of Police (Border), Nagaland and Deputy Inspector General of Police (Eastern Range), Assam at Golaghat on 1st May, 1985 along with Sector Commander J. N. Mathur of 48 Battalion Central Reserve Police Force. It was decided at the meeting that Nagaland would demolish its bunkers constructed by the Nagaland Armed Police at Merapani Check Gate, dismantle the fencing and withdraw the Nagaland Armed Police from the Quarantine Check Gate by 2nd May, 1985. It was further decided that on withdrawal of the Nagaland Armed Police, Assam would also withdraw the additional armed police deployed in the wake of deployment of the Nagaland Armed Police there and that Assam would return the seized fencing material to Nagaland in Zimma. In pursuance, two bunkers were partially dismantled on 4th May but on 9th May, the Nagaland Armed Police reconstructed these bunkers and thus negated the decision of 1st May. It is also contended by Assam that withdrawal on the part of the Nagaland side could not take place because it was only the Deputy Commissioner, Wokha's orders prevailed as is clear from—Annexure 47 of N I—.

7.13 Nagaland on the other hand say that in pursuance of instructions given by Deputy Inspector General (Border), Nagaland, on 2nd May, dismantling of bunkers in the Nagaland Armed Police at the check gate was commenced. On 4th May, two bunkers had already been dismantled in the presence of the Superintendent of Police (Border). However, the decision taken at the 1st May meeting was not complied with from the Assam side. Although the Nagaland Armed Police had started dismantling their bunkers, no action was taken by the Assam side to dismantle their bunkers or to withdraw. Under the circumstances, the Sub-Divisional Officer, Bhandari reported to Deputy Commissioner, Wokha on 6th May that the Nagaland Armed Police personnel had been suitably instructed and had started reconstruction of bunkers. Deputy Commissioner, Wokha had also sent a message to Deputy Inspector General of Police, Border, Nagaland on 6th May that withdrawal of the Nagaland Armed Police from the check gate would be useless unless the Assam Government agreed to simultaneous withdrawal of the Merapani Police Station and the Assam Police attached to it. As no action had been taken by Assam, he wanted that the Nagaland Armed Police should be further strengthened at the check gate. Commissioner, Nagaland in his message of 7th May to Commissioner, Upper Assam Division, said that the joint decision to withdraw armed police forces of both sides should be enforced. He clarified that the police forces would be those who were reinforced and deployed after the 20th April, 1985. There was no response from the Assam side. Instead of defusing tension by withdrawal of forces, there was further reinforcement of Assam Armed Police by the Assam

side in the area and this created panic among villagers and the Nagaland Armed Police posted at the Inner Line Permit Check Gate.

7.14 It has been indicated earlier that non-implementation of the 1st May Agreement regarding withdrawal of the armed forces of the two States was one of the major causes in the building up of the situation culminating in the armed conflict in June. It is, therefore, important to be clear as to what that agreement was. What did it require the two sides to do? Why was the agreement not implemented? In other words—

- (a) What were the terms of the Agreement?
- (b) Why could the agreement not be implemented? and
- (c) Who was responsible for its non-implementation?

7.15 Evidence available to the Commission on this point is firstly, the affirmations made by the two sides in their affidavits and Counter affidavits—A I, N. I, A II and N II and affidavits of officers. Secondly, documents in the shape of Annexures contained in these affidavits or other documents available in some other papers filed by the two sides; also, documents which have become Commission's exhibits, Assam's exhibits and Nagaland's exhibits. Thirdly, information contained in some of the files which the Commission had called for. Lastly, evidence coming through oral examination.

7.16 Obviously, the best evidence would be contained in documents which are more or less contemporary to the time when the agreement was arrived at. The first such document would be the agreement itself as acknowledged by both sides. Unfortunately, no minutes of the 1st May meeting were kept, and the only contemporaneous document summing up the agreement is the message sent by the Inspector General of Police (Border) to Guwahati at—Annexure A 2 in A III—. It is reproduced below:—

"No. 1615 hrs. dated 1st May, 1985(.) Held a meeting with DIG(B) Nagaland today forenoon(.) DIG(ER) Sector Commander ASPOBAT three and DIG(B) Assam were also present(.) It was agreed that NAP and additional armed police from Assam inducted in Merapani after recent incidents will be withdrawn by May 2 evening(.) NAP will also dismantle bunkers and fencing extended towards Merapani bazar(.) Seized fencing posts will be given in Zimma to Nagaland representative(.) DIG(B) Nagaland has promised to confirm by tomorrow mid-day from Kohima(.) Am camping at Jorhat and would return to headquarters on May 3(.)"

7.17 Going in sequence, the other contemporaneous messages are:—

"Border Magistrate Merapani Nagaland to Deputy Commissioner (Wokha), dated 2nd May at—Annexure 3 of N VI—

SP(B) Nagaland is at Merapani and received instruction from DIG(B) Nagaland to withdraw the NAP deployed at Merapani check gate(.) Wanted instruction from your side urgently(.)"

.....

SDPO Golaghat Camp Merapani to DIG(ER) Jorhat with information to DISPOL Jorhat, dated 2nd May, 1985 at—Annexure C 32 of A II—

"No. SDP/GLT/1900, dated 2nd May, 1985(.) As directed self along with C.O. 48 Bn CRPF and Border Magistrate reached Merapani at about 4 PM(.) But SP(B) Nagaland was not found at Merapani(.) On enquiry at foothills NAP Camp learnt that SP(B) Nagaland would be available at Bhandari(.) Hence self C.O. CRPF and Magistrate went to Bhandari and held discussion with SP(B) Nagaland(.) SP(B) Nagaland informed that he has already received instruction from DIG(B) Nagaland for withdrawal of force etc(.) But Magistrate Nagaland is reluctant to implement said instruction unless clearance received from DC Wokha(.) DC Wokha being contacted and they are hopeful of getting clearance to-day evening or tomorrow morning(.) Hence the course of action would be taken tomorrow after clearance from DC Wokha(.) For information and necessary action(.)"

.....

Message dated 2nd May from 48 Bn CRPF to IGP(B) Guwahati, District Police, Commissioner UAD, ADC(B), DC, DSB Jorhat at—Annexure C 33 of A II—

"No. D III-1/85/OPS dated 2/5(.) Situation upto 021800 hrs of CRPF and 0212 hrs of A.P. 1 to 3—Nil(.) D Sector Commander alongwith A.C. (Ops)/SDPO Golaghat/Magistrate Merapani left at 1500 hrs to contact SP and DC Wokha in connection with demolition of bunkers extra fence erected at NAP and AP post at Merapani and to withdraw extra force assembled at both BOPs maintain the situation of pre 20th April, 1985(.) This was agreed by Assam and Nagaland Government(.) Since DC Wokha was not present at Merapani and Bhandari SDO Bhandari and SP Wokha requested Sector Commander they will do the needful as soon as they get clearance from DC Wokha by tomorrow forenoon(.) P/C out as per programme(.) Location of Sector Commander at Golaghat(.) Road condition of all posts motorable(.)"

Message from SDO Bhandari, to DC Wokha of 2nd May at—Annexure 21 of N VI—

"DIG(B) Nagaland has instructed SP(B) Nagaland Merapani to withdraw our NAP personnel posted to check gate since 20th April, 1985 and also instructed to dismantle all the bunkers and shelter constructions(.) Commandant CRPF/21/C/CRPF/Border Magistrate Assam and SDPO Golaghat also met this evening at 6.30 PM and asked me to withdraw the NAP personnel from check gate(.) However, I told them I will have to wait instructions from DC Wokha(.) Request kindly intimate about the Government decision as to how action will be taken on DIG(B)'s order(.) It appears that IGP Assam and DIG Nagaland level has taken on 10th April and post incident and not discussed for shifting of the police station as well as BOPs(.) Bunkers around police station Assam has already been reconstructed and strengthened the position(.)"

.....

Message of Deputy Commissioner Wokha dated 3rd May, 1985 to SDO Bhandari and Border Magistrate Merapani Nagaland in reply to SDO Bhandari's message of 2nd May at—Annexure 109 of N VI—

"Reference your signal No.dated 2nd May, 1985 regarding withdrawal of NAP posted at Nagaland police check gate Merapani(.) No action should be taken to withdraw the NAP until further orders(.)"

DIG(B) Nagaland to SP(B) dated 2nd May at page 111 of Deputy Commissioner, Wokha's file No. CON 34(2)/85—

Government approves our line of discussion(.) Carry out following :—
(i) On arrival of Assam officers (Police) dismantle bunkers (ii) take over fencing materials (iii) Withdraw all NAP personnel temporarily attached to check gate (iv) If convenient to you please return to Hqrs. urgently(.)"

Copies of this message went to Commissioner, Nagaland, Deputy Commissioner, Wokha, E Coy Commander 4th NAP Merapani.

Border Magistrate's message to Deputy Commissioner, Wokha dated 3rd May at—Annexure 4 of N VI—

"SP(B) and the representative of Assam Police alongwith 48 CRPF Commandant have decided to start the work of the withdrawal of forces from tomorrow i.e. 4th May, 1985(.) Your order is awaited(.) Most urgent(.)"

E Coy Commander to Deputy Commissioner, Wokha dated 4th May at page 92 of DC Wokha File No. CON 34(2)/85—

"Today meeting held with 48 CRPF Commandant/Addl. SP, Golaghat/SDPO Golaghat and SP(B) Nagaland discussed for withdrawal of extra forces deployed after 20th April, 1985 removing bunkers/perimeters(.) Assam Officers disagreed for removing of b/walls roofing thatch which was put on the standing structure by them inside their police station(.) One platoon of CRPF kept at school building(.) SP(B) Nagaland suggested for withdrawal to which CRPF CO stated that he will discuss with DIG(ER)(.) SP(B) Nagaland issued to withdraw force from check gate on 4/5(.) This is for your information and necessary action(.)"

.....

E Coy Commander to DIG(B)/DC Wokha dated 4th May at page 96 of DC, Wokha's File No. CON 34(2)/85—

"Refer your..... We are started for dismantle of bunkers today(.) But Assam Police not taken any action from their side(.) Kindly confirm further action(.)"

E Coy Commander to DC, Wokha dated 5th May at page 94 of DC, Wokha's File No. CON 34(2)/85—

"Signal received from SP(B) and reproduced below(.)"

Quote(.) DIG Police/BA-5/85 dated 5/5(.) Since Government have approved for withdrawal of NAP from check gate DIG(B) wants that the order should be complied(.) Whether Assam Government withdraw their force or not is not our concern(.) You may withdraw the NAP accordingly(.) Dismantling of bunkers/perimeters could be done gradually(.) Also the iron rods be collected and kept with NAP post(.) For your information and necessary action please(.) Unquote(.) As per orders of DIG(B) we are withdrawing our forces from Nagaland check gate on 6th May, 85(.)"

DC Wokha to DIG(B) dated 6th May at—Annexure 95 of N VI—with copies to E Coy Commn., SDO Bhandari and Border Magistrate—

"Reference your signal No. DIGPOL BA/585 dated 5th May, 85 regarding withdrawal of NAP from Merapani check gate(.) DC Wokha do not agree to the withdrawal of NAP from Merapani check gate unless Assam Government agree for simultaneous withdrawal of Merapani Police Station and the Assam Police post attached therein(.) It appears Assam Government do not want to withdraw their Police Station and AAP post from Merapani area(.) Therefore, we should further strengthen our NAP post at Merapani check gate and re-build the bunkers already dismantled by our police(.)"

DC Wokha to Commissioner, Kohima, dated 6th May at—Annexure 93 of N VI—

".....It was decided by police officials of both States to withdraw armed police personnel from Merapani area(.) But when Nagaland police started dismantling their bunkers and withdrawing from check gate no action was taken by Assam side to dismantle their bunkers or to withdraw(i) Hence normalcy cannot be restored....."

....

Commissioner, Nagaland to DC Wokha/SP Wokha with information to DIG(B) dated 6th May at page 98 of DC Wokha's File No. CON 34(2)/85—

"Understand that two DIGs(B) Assam and Nagaland have jointly decided simultaneous withdrawal of Assam Armed Police and NAP personnel from Assam Police Station and Nagaland check post at Merapani(.) If such combined decision has already been made withdrawal of the two police forces should be implemented on a definite date to be fixed by police authorities of both States under supervision of senior police officers of both States(.) No useful purpose will be served by further confrontation of forces and as such withdrawal should be arranged immediately and confirm to us (CCB-3/82 dated 6/5)(.)"

....

DC Wokha to Commissioner, Kohima with copy to DIG(B) etc, dated 6th May at—Annexure 94 of N VI—

"Reference your signal No. CCB 3/82 dated 6/5 regarding simultaneous withdrawal of armed police forces from Merapani areas(.) DC Wokha and SP Wokha had not been consulted in making such decision if there is any(.) Nor have we been informed of such joint decision so far(.) However, report was received from SDO Bhandari that such decision had been taken and our police started dismantling accommodation, bunkers in the check gate are on 4th May, 85(.) However, since no action was taken by Assam side either to withdraw or to dismantle their bunkers, our NAP were instructed to reconstruct again those bunkers(.) DC Wokha has been insisting that the Merapani Police Station set up in 1983 towards the Nagaland side of our check gate should be completely withdrawn with their civil and armed police as minimum pre-condition for our withdrawal of NAP from check gate(.) There is no reason why we should not be able to compel Assam to withdraw the Police station which is an insult to our check gate and which is in gross violation of the 1972 Interim Agreement(.) In fact at DC level meeting on 29th April, 85 I have insisted complete withdrawal of all Assam Armed Police posts from the Doyang

Sector along with our withdrawal of NAP from our check gate(.)"

....

Nagaland Exhibit N(7)—Police Kohima to DIG(B) with information to Commissioner, Nagaland dated 6th May, 85—

"SDO Bhandari has sent information to Speaker Nagaland that DIG(B) had ordered dismantling of bunkers of NAP at Merapani(.) According to Commissioner Nagaland it was decided that Assam police and Nagaland Police should withdraw simultaneously(.) Intimate return signal whether simultaneous withdrawal is being effected by both sides(.)"

....

Nagaland Exhibit N(8)—Police Kohima to DIG(B) and Copy to Commissioner Nagaland etc, dated 7th May, 85—

"Coy Comdr E Coy at Merapani has sent wireless No. dated 5th May, 85 to Speaker Kohima quoting your message No. DIGPOL/BR 5/85 dated 5th May, 85 saying you have ordered withdrawal of NAP irrespective of action taken by Assam Government(.) Your attention is invited to my crash wireless even number dated 6th May, 85(.) You may ensure withdrawal simultaneously by both sides as desired by Commissioner Nagaland(.) You may visit Merapani post and area immediately so that there is no mis-understanding(.) For Speaker only(.) Copy of my radiogram is enclosed(.)"

....

Commissioner Kohima to Commissioner UAD and DIG(B) at—Annexure 126 of N VI—dated 7th May, 85—

"Understand DIGs of Assam and Nagaland have made joint Decision to withdraw armed police forces of both States now being deployed at Merapani(.) Should be simultaneously done(.) The Police forces involved for withdrawal will be those which were reinforced and deployed after 20th April(.) The withdrawal will include armed personnel now being attached to Nagaland check gate and Assam Police Station/School compound(.) The withdrawal would be done under supervision of senior police officers of both States(.) We agree to this arrangement and wish it to be implemented immediately to reduce tension in the area(.) if you agree to this arrangement you may kindly instruct your DIG(B) to contact his counterpart in Nagaland immediately(.) DIG(B) Nagaland has already been briefed and will meet his counterpart(.) The matter related to establishment of Assam Police Station at Merapani will be taken up in our next meeting(.)"

....

From Commissioner, Nagaland to DC, Wokha/SP Wokha—Commission Exhibit No. XLVI dated 7th May, 85—

"Reference your signal even number dated 6th May regarding situation at Merapani and in continuation of our signal of even number dated 6th May regarding simultaneous withdrawal of both police forces(.) It appears that tension has been unnecessarily created at Merapani by concentration of armed police forces by both States there(.) Neither State gains anything out of confrontation and concentration of forces(.) Matter has been taken up with Government and it has been decided that both armed police forces who were inducted in Merapani after 20th April will be withdrawn simultaneously under supervision of senior police officers of both States(.) Matters related to withdrawal of Assam Police Station at Merapani would be taken up in the next meeting of Commissioners(.) Commissioner UAD has been informed of this decision *vide* our signal of even number of today and DIG(B) has been accordingly asked to implement the withdrawal of the police forces(.) Take action accordingly(.) Any officer attempting to twist orders of the withdrawal of police force will do so at his own responsibility(.) Acknowledge(.)"

....

From IGP(B) Guwahati to DIG(B) Nagaland Chumukedima with information to DIG(ER) Jorhat/IGP Nagaland Kohima and other at—Annexure A 3 of A III—

"No IGP/B/91/454-59 dated 7th May, 85(.) Reference our meeting at Golaghat on 1st May, 85 regarding measures to be taken to defuse tension in Merapani area(.) It is regretted that in spite of telephonic confirmation from you to DIG(ER) Jorhat on 2nd May, 85(.) Your Officers are avoiding taking follow up action as agreed to and are telling Sector Officer and SDPO Golaghat that they would consult DEPOCOM Wokha before taking action(.) So far only two bunkers have been dismantled by Nagaland side at Merapani check post only on 5th May, 85(.) NAP has not been withdrawn nor fencing posts removed nor thatch removed from tubular structure(.) Please ensure immediate action from your end as already agreed to so that DIG(ER) can reciprocate.....(.)"

....

U/O No. IGP/B/465 dated 8th May, 85 to Commissioner and Secretary Political (Shri Hazarika) at—Annexure A 4 of A III—

....

"2. Accordingly, I held a meeting with DIG(B) Nagaland, DIG(ER) Jorhat and

Commandant 48 CRPF Sector Commander 'D' Sector and Commandant 3rd A.P. Bn., Addl. S.P./S.D.P.O Golaghat on 1st May, 85 at Golaghat Circuit House at 11.30 AM. The DIG(B) Assam was also present, as we had discussed earlier. While the DIG(B) Nagaland did not find anything wrong on the action of D.C. Wokha entering Merapani P.S. on 22nd April, 85, the DIG(E) Jorhat and Commandant 48 CRPF gave their versions. It was, therefore, decided to withdraw the NAP and additional A.P. Bn. personnel inducted in Merapani by 2nd May, 85 evening. The NAP was to dismantle bunkers and fencing extended towards Merapani bazar. The seized fencing posts were to be given to Nagaland representative in 'Zimma'. The DIG(B) Nagaland stated that he would confirm by the following day, after consulting his State Government.

3. The DIG(B) Nagaland accordingly left for Kohima on 1st May, 85 and telephonically confirmed to DIG(ER) Jorhat on 2nd May, 85 from Dimapur after consulting his State Government. In pursuance of this agreement the Sector Commander and SDPO, Golaghat have been visiting Merapani, but the Nagaland officials including SP(B) Nagaland, Magistrate Nagaland at Merapani etc. are avoiding taking follow up action saying that they would consult the Deputy Commissioner, Wokha. The only progress so far has been that the NAP have dismantled two bunkers constructed by them at Merapani Check post opposite our Merapani P.S. I have accordingly sent a W.T. Message to DIG(B) Nagaland today (copy enclosed for perusal).

4. While tension in Merapani area is slightly defused, reluctance on the part of Nagaland side to abide by the agreement is strange. In the meantime, 2 companies of APTF sent by D.G.P. Assam have been stationed at Golaghat and Jorhat to reinforce our B.O.Ps as and when necessary....."

....

From IGP(B) Guwahati to DIG(B) Nagaland Chumukedima with information to DIG(ER) Jorhat/IGP Nagaland Kohima and others at—Annexure A-5 of A III—

"No. IGP/B/91/502-07 dated 10th May, 85(.) Please refer my message No. IGP/B/91/454-59 dated 7th May, 85(.) Instead of taking follow up action on removing bunkers withdrawal of NAP etc(.) NAP personnel have reconstructed two bunkers on 9th May, 85(.) NAP personnel also forcibly cut a tree just in from of Merapani P.S. and are constructing perimeter(.) Please instruct NAP personnel to dismantle bunkers/perimeter/fencing etc. as already agreed to(.)"

SDO Bhandari to DC Wokha of 10th May—Commission Exhibit XXI—

"One(.) fencing work at Merapani check gate is completed today(.) two(.) SP(B) reached Merapani afternoon the 10th May with instruction from DIG(B) that the Merapani NAP post should be withdrawn immediately(.) However, I have told him not to comply with DIG(B)'s order as the matter will be referred to the Government once again(.) The same matter had already discussed with the Border Magistrate for the next course of action(.) Request kindly take up the issue with the Government(.) Public of the area are resented and expressing their intolerance on the activities of the DIG(B) Nagaland(.) Any unfavourable incident may happen at any time in the area if and when withdrawn NAP post from Merapani(.)"

DIG(B) to Police Kohima dated 9th May, 85—Commission Exhibit XXVIII-(ix)—

"Kindly refer your signal No. dated 6th May and also dated 7th May regarding withdrawal of NAP at Merapani check gate(.) After my detailed inquiry the Commissioner Nagaland issued order to DC Wokha to withdraw NAP immediately but it was not carried out(.) On 1st May I met IGP(B) at Golaghat and we agreed to withdraw on 2/5 under the supervision of SP(B) on the both sides and go to pre 20th April—repeat pre 20th April position(.) DC Wokha refused on the ground Police Station Assam should also withdraw which is existed since long time back(.) Again I met CS and Commissioner and order to withdraw our force was issued(.) By posting one platoon which violates our own agreement will not bring any benefit to people nor the Government(.) Deployment was ordered by DC Wokha and he wants more NAP at Rengmapani also(.) Kindly withdraw the NAP at Merapani check gate and please ensure that no NAP is deployed in the border areas in future without consulting Border department(.) SP/Commandants may be instructed if approved(.)"

DIG(B)'s letter to IGP, Nagaland dated 12 May 85—Commission Exhibit XXVIII-(viii)—

"It appears that the Government is keeping the PHQ in complete dark about the Border deployment of NAP and the instructions directly issued to this office. It is also regretted that despite our effort to clear the situations the NAP always comes as a hindrance. On several occasions by moving into the border where their presence is always unwanted. On this regard the reason is obvious the boundary is under dispute, however, this fact remains that the constitutional boundary exists (though we do not agree verbally or officially).

HA/87—11

Personality clash also exists at District administration level which is creating awkward situation for me from time to time. I am enclosing a signal received from IGP(B) Guwahati and also a signal issued by DC Wokha which is being followed to the letter by all the offices at Merapani. Surprisingly all the officers in Merapani appears to have personal interest in the issue as they all belong to the same tribe.

I have brought honourable solution for the Government of which the Chief Secretary and the Commissioner are in full picture and as they directed me order to withdraw was issued, but it was not carried out.

The Deputy Commissioner wants the Police station to withdraw also, which existed since July, 1983. This, of course, Assam Police cannot comply without Government clearance. Now D.C. Wokha is also asking for a thing which is unreasonable. But the tragedy is no action is taken so far on this officer by the Government.

The only solution as I see it is the NAP should be withdrawn immediately without any condition as ordered by the Commissioner on 26th April, 85 to D.C. Wokha.

The Commissioner has also asked me on 26th April, 85 to transfer/change the Coy Commander at Merapani as he was a party to the mob fury on 22nd April, 85.

As seen above we are in continuous contact and if anything goes out of hand the blame will squarely fall on the Nagaland Police and nobody else."

CS to DC Wokha dated 13th May—Commission Exhibit XLV—

"Commissioners of Assam and Nagaland will be meeting shortly to review the law and order situation existing at Merapani(.) the two Commissioners had earlier agreed to withdrawal of posts on either side but it appears that DC Wokha has not implemented the decision(.) Tension still continues in that area on account of the non-implementation of the agreement arrived at between the two Commissioners(.) Before the two Commissioners meet it is necessary that DC Wokha should come to Kohima and explain the position to CS and the Commissioner Nagaland(.) He is, therefore, instructed to come to Kohima and discuss the matter with CS and Commissioner as early as possible(.)"

DC Wokha to CS Nagaland etc. dated 13th May at—Annexure 96 of N VI—

"No CON 34(2)85-86/1853 dated 13th May, 85(.) Reference your signal No. NGO 47/84 dated 13th May, 85 regarding

withdrawal of armed police posts by both the States in Merapani area(.) It may kindly be recalled that DIG(B), Nagaland have been asked by the Government to implement the decision for simultaneous withdrawal of forces and not DC Wokha(.) Para(.) It appears decision for mutual withdrawal of forces have been taken much earlier by DIG(B), Nagaland and DIG(B), Assam(.) This was conveyed directly by DIG(B) Nagaland to the 'E' Coy Commander at Merapani for implementation and not to DC, Wokha(.) Not even a copy was endorsed to DC, Wokha(.) In that message DIG(B), Nagaland had gone to extent of stating that it was not our concern whether Assam Government withdraw their forces or not(.) In compliance to this instruction our policemen started withdrawal process by dismantling bunkers on 4th May, 85(.) After two bunkers were dismantled there was no response from Assam side(.) Hence they sought the advice of SDO(C) Bhandari and DC Wokha as to what should be done(.) Our reply was that if Assam side do not reciprocate the bunkers should be reconstructed(.) It appears till today the DIG(B) of both the States had not come to the spot for effecting simultaneous withdrawal of forces as decided(.) As already reported *vide* today's Sitrep the Lotha hoho is organising public demonstration at Merapani to prevent withdrawal of NAP from the check gate(.) For more details please read situation report dated 13th May, 85(.) Para(.) In my opinion we should demand withdrawal of all Assam Armed police posts from Doyang R.F. and Merapani P.S. as a condition for our withdrawal of NAP(.) Since all these Assam Police posts are unauthorised and violative of 1972 agreements they can in no way be treated on equal footing as our police check gate which is authorised(.) The NAP posted there are only to guard the check gate the existence of which have been threatened by the action of Assam in deploying Assam Police all over the area and even forcibly removing the fencing of the check gate(.)"

From Speaker, Kohima to DC, Wokha, SDO(C), Bhandari, Chairman Lotha Hoho, Wokha dated 14th May—Commission Exhibit XXII—

"No..... reference my signal dated seventh May(.) Chief Minister/Speaker/Finance Minister/Commissioner/IGP in a meeting on sixth May decided withdrawal of police of Nagaland and Assam simultaneously from Merapani(.) Any further development in border area may be informed to CM/Speaker/Commissioner/IGP for action(.)"

DIG(B), Nagaland to Commr, Kohima dated 23rd, May—Commission Exhibit XXIV—

"No DISPOL/BA-5/85/477 dated 23/5 Message received from SP(B) Camp, Merapani is reproduced below for information necessary action(.) Quote(.) Today DIG(ER), Jorhat visited Merapani PS(.) y/day(.) Today Merapani public are putting up CGI sheet and walling (Bamboo) in one of the tubular structure(.) This instrn was issued by DC Wokha(.) Situation appeared to be normal(.)"

DIG(B) Cmd. to Coy Comdr Merapani/DC, Wokha dated 28th May—Commission Exhibit XXIII—

"No DIGPOL/BA-1/85/454 dated 28/5(.) Reference your S/No. 4/E/P DO/85 dated 28/5 and DC Wokha S/No. Con 24(2)84-5 dated 23/5(.) It may be recalled that Commr order for withdrawal dated 26th April, 85 and order of Government conveyed by me dated 2nd May, 85 still stands as no order cancelling the same is received(.) You refused to carry out the order on the ground that the deployment is ordered by the DC Wokha and since the latter insists on shifting police station and also ordering putting of fencing/roofing etc(.) This office is not in a position to issue any instruction(.) This has been reported to Government already(.) You may seek necessary instruction from DC Wokha and Comdt 4 NAP(.)"

DIG(B) Cmd to Commr, Kohima dated 28 May—Commission Exhibit XXV—

"No DIGPOLBa-1/85/455 dated 28.5(.) Situation at Merapani is expected due to the irresponsible activities of the distt. authorities(.) This office find no way to defuse the tension since the Dep Comm has disregard all our effort till deployment of force by Assam(.) Only DC Wokha can defuse tension by meeting his counterpart immediately(.) The same instruction is issued to the post(.)"

DIG(B) to IGP Nagaland, Kohima dated "DO No. DIGPOLB-1/85453 dated 28 May—Commission Exhibit XXVIII (iii)—

28th May, 85(.) The deployment of Assam Armed Police at Merapani area was expected, as we have been over playing far too much. Since long besides clear agreements in the area between the two Governments—

(1) The 4th Nagaland Armed Police personnel moved into the check gate which is located just opposite Merapani Police Station on 20th April, 85 when the Police

Station register a case against a Naga Contractor who put up a fencing which violates the agreements. So naturally the Assam Police also sent their armed personnel to their Police Station for protection of their Police Station Staff.

(2) Under the above situation I suggested to the Inspector General of Police on 1st May, 85 at Golaghat to withdraw on 2nd May, 85 simultaneously on the position of pre-20th April, 1985 so that, no side is felt humiliated, of which he agreed. Thus, I met the Chief Secretary and the Commissioner and passed on to the Superintendent of Police (Border) to withdraw when his counterparts arrived. In this regard detail verbal briefing is also done. However, the Superintendent of Police (Border) could not effect withdrawal.

(3) In the meantime the stalemate continues, then the Deputy Commissioner of Wokha orders that :—

(a) The fencing completed by the villagers under the protection of Nagaland Armed Police on 30th April, 85.

(b) Roofing of the standing structure are completed by villagers which were stopped by Government of Nagaland in the year 1975 on the complaint of Assam Government and many joint Committees formed to resolve the matter. This was also done up by the order of Deputy Commissioner, Wokha under the protection of Nagaland Armed Police on 23rd May, 85.

(4) (a) The Commissioner Nagaland issued unilateral withdrawal of Nagaland Armed Police on 26th April, 85 which was refused by Deputy Commissioner and Nagaland Armed Police.

(b) I conveyed the order of Nagaland Armed Police withdrawal on 2nd May, 85, but it was not effected instead they ask Police Headquarter if such order exists, in this regard, it was surprising that the Police Headquarters without consulting the Chief Secretary nor the Commissioner replied that, no such order exists vide signal No. PHQ(A-IV)52/84 dated 7th May, 85. Thus, the withdrawal of Nagaland Armed Police was not effected by the Commandant nor the Company Commander posted there.

The Nagaland Armed Police are refusing to withdraw on the ground that, they were deployed by the Deputy Commissioner and they will withdraw only when the Deputy Commissioner, Wokha orders.

Now the Deputy Commissioner, Wokha is saying that he will withdraw only when the Assam Police Station is withdrawn, which existed for the last 3/4 years; of which the Police Department of Assam are not in position to do so without Government approval.

As seen above there is no way for further negotiation untill and unless we withdraw the Nagaland Armed Police from the Check Gate. May I also remind you of my D.O. letter No. DIGPOL/BA-1/85/443 dated 12th May, 85 requesting you to withdraw them immediately and also my Crash Signal No. DIGPOL/BA-1/85/442 dated 9th May, 85 for necessary action.

As for this office, we are not in a position to negotiate with our counterpart, as the reasons are enumerated above. We are in regular contact and visit to Merapani. Action solely lies with the Deputy Commissioner and the Superintendent of Police, Wokha. This refers your Sig. No. PHQ (A-16)85(A)J dated 27th May, 85."

7.18 These substantially are the contemporaneous documents which will provide the best source of information to see what exactly were the terms of the agreement of 1st May; and then, why the agreement was not implemented and who was responsible for its non-implementation. Affirmations contained in the affidavits of the two State Governments or those in the affidavits of various officers can at best be useful to supplement or to explain, where such explanation appears to be necessary, what is contained in these documents. These affirmations to the extent that they go against the position that emerges from the documents will have to be rejected. The same applies to oral evidence that has come before the Commission either through cross-examination of those who had furnished affidavits or through the oral examination of witnesses who appeared before the Commission directly. This approach would be amply justified because, firstly documentary evidence has precedence over oral evidence and secondly, as it happens, the documentary evidence is of a contemporaneous nature and, therefore, would best bring out the true facts; affidavits and the oral evidence comes well after the occurrence itself and because of the somewhat adversary nature that the proceedings before this Commission have assumed, would have to be taken with a pinch of salt. It is on this basis that the issues mentioned above about the 1st May Agreement will be examined.

The Exact Terms of the Agreement

7.19 As has been pointed out above, no minutes of the 1st May meeting were kept and the only immediate document which sums up the agreement is—Annexure A 2 in A III—, the message of Inspector General of Police (Border), Assam to Police Headquarters. It says in substance : (i) Armed Police inducted into Merapani by Assam and Nagaland after the recent incident would be withdrawn by May 2nd evening,

(ii) Nagaland Armed Police will dismantle bunkers and fencing extended towards Merapani bazar, (iii) Fencing posts which had been seized by Assam would be returned to Nagaland in Zimma, (iv) Deputy Inspector General of Police (Border), Nagaland was to confirm the arrangements by the 2nd May mid-day.

7.20 The wording contained in this document is quite precise. The message was sent quite obviously soon after the meeting of the 1st May on that very day at about 4.15 P.M. The decisions arrived at were quite fresh in the mind of Inspector General of Police (Border) who was in a sense convener of the meeting and Chairman of the meeting; particularly in the light of the fact that he was in overall command of all the armed forces in the border. There is no reason, therefore, to have any doubt that the agreement was nothing other than what is indicated in this message—unless of course strong proof is adduced to show that the actual agreement was contrary to what this message says or there was something agreed upon which is not mentioned in this message, and above all, that Inspector General of Police (Border), Assam's bonafides are questionable.

7.21 There is another document which would by and large seem to confirm what this message at—Annexure A 2 of A III—says. This document is a message sent by Deputy Inspector General of Police (Border), Nagaland who was the only representative from the Nagaland side who attended the 1st May meeting—reproduced under para 7.17 above. Deputy Inspector General of Police (Border) had met both the Commissioner, Nagaland and the Chief Secretary, Nagaland and it was after their concurrence that he had confirmed to Deputy Inspector General of Police (Eastern Range) that the arrangements arrived at on the 1st May could be implemented. He had also sent a message to his own Superintendent of Police (Border) who was camping at Merapani on that very day, i.e., 2nd May. After the earlier discussion with the Superintendent of Police the message refers to Government having approved the line of discussion between Deputy Inspector General of Police (Border) and Superintendent of Police (Border) to carry out on arrival of Assam Police Officers—(i) Dismantling of bunkers, (ii) Take over fencing material from the Assam authorities, (iii) Withdraw all Nagaland Armed Police personnel temporarily attached to the check gate.

7.22 There is no stipulation in these directions to the Superintendent of Police (Border) that the Nagaland Armed Police should be withdrawn only if there was simultaneous withdrawal of the Assam Armed Police; or that dismantling of bunkers or other structures at the Merapani Police Station by the Assam authorities was a necessary concomitant of dismantling by Nagaland. It is inconceivable that a day after the meeting where the various arrangements were decided upon and immediately after getting approval of the Commissioner, Nagaland and the Chief Secretary, Nagaland to the terms of the agreement, the Deputy Inspector General of Police (Border) would neglect to mention in his message to his subordinate who was to implement the agreement, these obligations on the

part of the Assam authorities had that been the agreement.

7.23 The position, therefore, that emerges on a reading of these two documents is firstly, that there was no over-whelming importance attaching to the aspect of simultaneous withdrawal. Withdrawal was to be effected by both sides and as happens in such situations, it did not need to be said that both would more or less withdraw at the same time. In any case, the critical importance that these aspects seem to have assumed a few days later was certainly no part of any dismantling by the Assam side, let alone any mention of simultaneous dismantling.

7.24 What does the oral evidence say? Shri Kharkawal, Inspector General of Police (Border), Assam says at one point in his cross-examination that since it was the Nagaland side which inducted the Nagaland Armed Police in the check gate area against the agreement between the two State Governments and since it was the Nagaland side which had made the bunkers and other defensive positions and had extended the fencing and other building materials, it was for the Nagaland side to dismantle these first and then the additional police from Assam was to be withdrawn and seized material given back. In his further cross-examination on recall, Shri Kharkawal said with reference to the terms of the agreement that the precise decisions taken were that the Nagaland Armed Police would be withdrawn. Immediately, thereafter, the Assam Police would be withdrawn more or less simultaneously; bunkers erected at the check gate would be dismantled by the Nagaland Armed Police and fencing extended towards Merapani bazar after 20th April would be removed; there was no obligation on the Assam side to remove any bunkers erected in the Police Station; there were no new bunkers made at the Police Station but the existing bunkers were strengthened. Shri Kharkawal further said that he was quite clear about the decision to which Deputy Inspector General of Police (Border), Nagaland was a party, subject of course to later confirmation by him. This cast no obligation on Assam to remove any bunkers at the Police Station. Further, although—A 2—does not say so the agreement was to be implemented under supervision of the Sector Commander. Seized fencing material was to be returned in Zimma after withdrawal of force and dismantling of bunkers by Nagaland side. This part of Shri Kharkawal's evidence seems to generally agree with Deputy Inspector General of Police (Border)'s directions to Superintendent of Police (Border), Nagaland except that the order of the various steps does not coincide. However, the basic point of whether there was to be any dismantling by the Assam side is clear. There was to be none.

7.25 Shri Sumant, Deputy Inspector General of Police, Eastern Range, Assam was present at the 1st May meeting. In his cross-examination he says that the decision of the 1st May meeting was that bunkers and fencing put up by the Nagaland Armed Police at the check gate would be dismantled, Nagaland Armed Police stationed at the check gate and Assam Armed Police at the Merapani Police Station would be withdrawn, fencing material would be given

in Zimma to Superintendent of Police (Border), Nagaland; Deputy Inspector General of Police (Border), Nagaland was to confirm these arrangements to him over the telephone after he had gone back to Kohima. Thereupon, Deputy Inspector General of Police (Eastern Range) and his officers were to meet Superintendent of Police (Border), Nagaland at Merapani and the agreement was to be implemented under the supervision of the Sector Commander. Shri Sumant also acknowledged in his evidence that he was in agreement with the evidence given by Deputy Inspector General (Border), Nagaland that at the 1st May meeting it was agreed that the armed police personnel inducted into the area after the 20th April would be withdrawn by both States simultaneously. He then again repeats that at the meeting it was agreed that only Nagaland should dismantle all bunkers and fencing put up after 20th April. He did not agree with Deputy Inspector General of Police (Border)'s statement in his evidence that withdrawal of forces and dismantling of bunkers would be done by both States simultaneously. He is very categorical that in any case there was no question of Assam dismantling anything because no bunkers had been put up after the 20th April at the Merapani Police Station. With reference to a message which the Sector Commander, who was also present at the meeting, had sent to him—Annexure A 80 in A III—, where reference is made to dismantling by both sides, Shri Sumant says that this message is not factually correct as there were no bunkers or fence erected at the Merapani Police Station after 20th of April. There was admittedly no fencing at the Merapani Police Station and, therefore, to the extent that the Sector Commander's message refers to fencing at the Assam Police post, it certainly seems to be inaccurate.

7.26 From the Nagaland side, Deputy Inspector General of Police (Border), Nagaland had attended the 1st May meeting. According to him in his evidence the agreement was—(i) Withdrawal of armed police personnel inducted into the area on or after the 20th April by both States, (ii) Removal of all the construction like bunkers and fencing, basha construction etc. which came up on or after 20th April by both sides, (iii) Withdrawal and dismantling to be done simultaneously under the supervision of two senior officers of the rank of Superintendent of Police, (iv) Confirmation to be conveyed by him on the 2nd May at noon after getting approval of the Nagaland Government, (v) Fencing material was to be returned to Nagaland Government in Zimma.

7.27 According to Shri Shurhiu, Deputy Inspector General of Police (Border), Nagaland—Annexure A 2 of A III—was partly correct but was incomplete and his understanding of the agreement could be confirmed by the Sector Commander who was also present.

7.28 Superintendent of Police (Border), Nagaland was not present at the 1st May meeting. It is, however, necessary to include his understanding of version. In his affidavit he says that Deputy Inspector General of Police (Border) had discussed the 1st May Agreement with him at 0630 hours on the 2nd May. He left on the same day for Merapani and awaited

for Deputy Inspector General of Police (Border)'s signal. At about 3.30 P.M. he received the signal saying that he should make arrangement with the Assam Police officials for simultaneous withdrawal of Assam Armed Police and Nagaland Armed Police which were inducted after 20th April, 1985. He is referring here to the message which has been discussed above and which makes no mention of simultaneous withdrawal.

7.29 He further says in his affidavit that on 3rd May at about 3.00 PM the Sector Commander, Additional Superintendent of Police and Sub-Divisional Police Officer, Golaghat arrived at Merapani Police Station and he along with 'E' Company Commander, 4th Nagaland Armed Police also had a meeting with them. No minutes were kept but it was agreed he says to withdraw simultaneously and the decision taken in the presence of Shri J. N. Mathur, the Sector Commander were as follows:—(i) To strictly maintain pre-20th April, 1985 position and withdrawal of armed police forces and dismantling of bunkers, trenches, walls etc. will be simultaneous action, (ii) Demolition, dismantling of bunkers, trenches walls etc. to be started from the next morning, i.e., 4th May, 1985, (iii) Armed Forces will be pulled out only after the completion of demolition, dismantling of bunkers, trenches walls etc.

7.30 It is not clear how these 'decisions' were taken because in working out modalities of withdrawal one cannot modify or supersede decisions taken by superiors, as was the case through the agreement of 1st May. Also, there is no mention here of dismantling of fencing. This was an important element and should surely have received special mention rather than presumably be included in general terms, etc. There is no mention of returning seized fencing material by the Assam authorities.

7.31 On a general analysis of the documentary and oral evidence, the conclusion that emerges is : (i) there was no serious lack of understanding as to the exact terms of the 1st May agreement on the part of either side on the 1st May or even 2nd May. The understanding incorporated in—Annexure A 2 of A III—and the 2nd May message of Deputy Inspector General of Police (Border), Nagaland to Superintendent of Police (Border) are substantially the same, (ii) The understanding was that both sides were to withdraw and Nagaland were to dismantle bunkers and fencing erected after the 20th April. In the spirit of the understanding which existed between senior police officers of the two States to which reference has been made by a number of witnesses, no further precise details of timing etc. needed to be spelt out. The senior officer Sector Commander would have generally dealt with all these, (iii) The point really is the terms of the agreement, not whether these terms were right or fair to Nagaland. Nagaland may well feel that the status of Assam in the disputed area is no better than that of Nagaland and this belief seems to have been particularly pronounced in the district administration of Wokha, notably the Deputy Commissioner himself and in that light everything was to be mutual, simultaneous. Therefore, for every specific act on the part

of Nagaland, there was to be an immediate reciprocal act on the part of Assam. Based further on this thinking, the approach formulated and adopted about the 3rd/4th of May might well be this simultaneous withdrawal. But this is not the issue; the issue is what were the contents of the agreement that was arrived at on the 1st of May. The documents quoted and which are the best source of information on this point are quite clear. There is no lack of clarity as to what the contents conveyed and there is thus no scope for any confusion as to these contents. Secondly, we are here talking of the agreement of 1st May, not the decision of Governments either of Assam or Nagaland. The agreement of 1st May was arrived at by officers who were competent to take these decisions. If the approach adopted by the Nagaland Government on the 6th May about withdrawal being simultaneous, was at variance with the agreement of 1st May is amounted to resiling from stipulations entered into by Nagaland earlier. Gheraoing etc. of Deputy Inspector General of Police (Border), Nagaland was in this context unfortunate.

Responsibility for non-implementation

7.32 As has been held above, the terms of the agreement were quite clear. Shri Shurhiu, Deputy Inspector General of Police (Border), Nagaland, who participated in the 1st May meeting was quite clear about the message that he sent to the Superintendent of Police (Border) on 2nd May. He, however, took a somewhat different stand in his evidence before the Commission. That he was giving evidence under considerable strain was quite evident; firstly, in view of the fact that although he had been cited as Nagaland witness he had not been produced by that State. He had to be summoned by the Commission. Secondly, when confronted with various documents which have been referred to above, Commission's exhibits etc. in which he himself had put the blame for non-implementation of the agreement squarely on Deputy Commissioner, Wokha, he chose to say nothing. No reliance can, therefore, be placed on anything that he says on his appearance before the Commission. The relevant documents speak for themselves and it is these that will be relied upon. Similarly, it was not for the Superintendent of Police (Border), Nagaland in working out the modalities of implementation to in effect change the terms of the agreement itself. There was no mention of simultaneous etc. in the 1st May Agreement as to dismantling and it was, therefore, not open to the Superintendent of Police (Border) to make any such stipulation. The fact that he did so would seem to confirm the impression given by various documents that the whole thing was being delayed and unnecessarily complicated because of interference by the Deputy Commissioner, Wokha.

7.33 Scarcely had the Superintendent of Police (Border) received instructions about implementation of the agreement from Deputy Inspector General of Police (Border) than people like the Border Magistrate or the Sub-Divisional Officer, Bhandari started sending messages to the Deputy Commissioner, Wokha for instructions. Inspector General of Police, Nagaland in his affidavit before the Commission has given a

long account of his understanding of who was authorised to order movement of the Nagaland Armed Police in the border. He refers to the Superintendent of Police (Wokha) not being competent to withdraw Nagaland Armed Police elements from the Inner Line Permit Check Gate without the Deputy Commissioner's agreement. With reference to Commissioner, Nagaland's order of 26-4-1985 (Nagaland Exhibit 13) for withdrawal of Nagaland Armed Police from the check gate forthwith, he says that if he (Inspector General of Police, Nagaland) had then ordered withdrawal on receipt of this order of Commissioner, Nagaland, the Nagaland Armed Police elements could not have been withdrawn without concurrence of Deputy Commissioner, Wokha. At the same time, according to him, officers authorised to deploy Nagaland Armed Police on the Assam-Nagaland border are the Home Commissioner and Chief Secretary on the recommendations of Commissioner, Nagaland. Further, that the deployment of Nagaland Armed Police at the check gate could not be done by just anybody; Government orders would be necessary and, therefore, the deployment of Nagaland Armed Police at the check gate should have been done with the approval of Government.

7.34 The fact of the matter, however, is that even with all its deficiencies, the firmly recognised authority for the border was the Inspector General of Police (Border), Assam. Admittedly, he could not on his own order the Nagaland Armed Police to move here and there without the concurrence of Deputy Inspector General of Police (Border) who was the competent authority. But the authority on the Nagaland side was the Deputy Inspector General of Police, Border and not say, the Deputy Commissioner, Wokha or the Deputy Inspector General, Nagaland Armed Police, or the Border Magistrate and so on.

7.35 Under the circumstances, it is indeed strange, how low level functionaries like the Border Magistrate or the Sub-Divisional Officer, Bhandari should have taken it on themselves to go rushing to the Deputy Commissioner, Wokha for orders. Not only was this entirely improper but it suggested a serious deficiency in the district administrative set up. It suggested further a partisan approach on the part of 'E' Company Commander of the 4th Nagaland Armed Police Battalion stationed at the foothills. Obviously, the source of the Border Magistrate's information or the Sub-Divisional Officer, Bhandari's information was this officer. He was also sending direct messages to the Deputy Commissioner, Wokha, when he had no business to do so. There were messages going and coming to the political authorities also like the Speaker or Finance Minister who were in touch with these extremely low level functionaries.

7.36 Be that as it may, these messages from the Border Magistrate and the Sub-Divisional Officer, Bhandari, quite clearly indicate the involvement of the Deputy Commissioner right from the 2nd May. This is confirmed by his own message sent on 3rd May to Sub-Divisional Officer, Bhandari, and the Border Magistrate with reference to their messages in which he says that no further action should be taken till

further orders. In his evidence, Shri Lalthara has stated he had nothing to do with the movement or deployment of Nagaland Armed Police but his actions here do not confirm that statement. The 'E' Company Commander who was the immediate officer to actually carry out the withdrawal seems to have worked under the orders of Deputy Commissioner, Wokha and not under the orders of the Superintendent of Police (Border) or Deputy Inspector General of Police (Border). His intention was not to withdraw and in the Deputy Commissioner and the local political leadership he found a sympathetic chord. It is for this reason that he was feeding Deputy Commissioner with all the orders that he was getting from time to time.

7.37 The next thing that is reasonably clear is that, possibly at the instance of Deputy Commissioner, Wokha, action was held up and such things as putting in stipulations of precise timings, simultaneous and so on emerged about the 3rd or 4th May. The Superintendent of Police (Border) was under clear instruction from Deputy Inspector General of Police (Border) to implement the agreement in terms indicated in his message of 2nd May. He, therefore, could not totally ignore these instructions. It was as a result of this that some beginning was made in the dismantling of bunkers. This dismantling was not stopped because Assam were not doing their part as has been suggested but obviously because of the stand taken by the district authority. As far as the Deputy Commissioner was concerned, this stand required that the Assam authorities should remove the Merapani Police Station and even the Border Outposts in the Merapani area which had been set up in contravention of the interim agreement of 1972. This is confirmed by his message of 6th May to Deputy Inspector General of Police (Border) where he clearly says that he does not agree with withdrawal unless this is done. He was actually suggesting strengthening of the check gate rather than withdrawal. In fact, in spite of his Commissioner's clear directions contained in his message of 6th May and the Chief Secretary's communication of 13th May, even at the end of the month, he still continued to press for the removal of the Merapani Police Station as a condition for withdrawal of Nagaland Armed Police. It is this stand, it can be reasonably concluded, that prevented further dismantling and withdrawal both by Nagaland as well as Assam.

7.38 While it is not in the terms of reference of the Commission to go into decisions taken at the political level, it is nevertheless quite obvious from the material on record that the Deputy Commissioner, Wokha, was acting contrary to the instructions received by him

from his superior authorities including the Commissioner, Nagaland and even possibly the Chief Secretary.

7.39 In the absence of the dismantling of bunkers and more so, of the fencing that had been put up after the 20th April, Assam could be reasonably expected to say that they would withdraw only after this had been done. Therefore, the emphasis on simultaneous withdrawal really made no sense. It would have been proper at this stage for the senior officers of the two States to get together and here it certainly was a failure on the part of these senior officers not to do so. The position on the ground, however, was that while the senior officers from the Nagaland side had started speaking of simultaneous withdrawal, under instructions of the Deputy Commissioner, Wokha, fencing at the check gate instead of being dismantled was actually extended and by about the later part of May had been completed. This was a step in the opposite direction to withdrawal.

7.40 It is again quite clear that the unilateral withdrawal order of Deputy Inspector General of Police (Border) was not really something that changed the agreement of 1st May. It has to be seen in the context of developments on 3rd and 4th May. It would be reasonable to conclude that by this order Deputy Inspector General of Police (Border) wanted to stop the insistence of the local Nagaland authorities on dismantling by the Assam side in absence of which withdrawal was not taking place. It must be said to the credit of Deputy Inspector General of Police (Border) that even on the 10th May he was making attempts to defuse the situation by asking for withdrawal of the police forces. This is evident from the message of Sub-Divisional Officer, Bhandari to Deputy Commissioner, Wokha of 10th May where in referring to this he says that he had told the Superintendent of Police, Border not to comply with these instructions. Here is a very junior officer informing his Deputy Commissioner that he "had told" the Superintendent of Police—far senior to the Sub-Divisional Officer—not to comply with instructions issued by an officer of the rank of Deputy Inspector General of Police. In this atmosphere, the feelings and responses of Deputy Inspector General of Police (Border) reflected in his messages/letters—Commission's exhibits under para 7.17 are natural and understandable.

7.41 The conclusion, therefore, is (i) the terms of agreement of May 1, 1985 were clearly understood by both sides and there was no ambiguity, (ii) implementation of the agreement was frustrated because of Deputy Commissioner, Wokha, who with the tacit support of the political set up was continuously flouting the orders and authority of his superiors.

CHAPTER VIII

(1) SEQUENCE OF EVENTS LEADING TO THE CONFLICT

(2) WHETHER THE CONFLICT AND RESULTING LOSSES COULD HAVE BEEN AVERTED

The Assam Check Gate of 26th May

8.1 The setting up of this check gate which is described by the Assam side as a Forest Check Gate is alleged by Nagaland to be undoubtedly the most important single event which had escalated tension in the area past the point of no return. It resulted in a direct face to face confrontation of the armed police forces of both States, leading to such an explosive situation that even a small altercation could result in conflagration and armed conflict. The event itself has been described as the setting up of a Border Outpost cum Check Gate on the Golaghat-Wokha road about half a kilometre away from the Nagaland Armed Police Company Headquarters at the foothills. The so-called Check Gate was in actual fact a massive Border Outpost on either side of the main road and three Companies of Assam Armed Police were stationed here. It completely cut off the Nagaland Armed Police Coy Headquarters from the Nagaland Check Gate at Merapani which now stood virtually encircled by the Assam Armed Police.

8.2 Going by the affidavits filed by the two States, Nagaland have described this particular episode in the following terms :—

The Nagaland position

"The next incident of major importance occurred on 26th May 1985. On the morning of 26th May, a large number of Assam Armed Police in about seventeen trucks forcibly opened and passed through the Nagaland Inner Line Permit Check Gate at Merapani and transported materials for construction of a Police Post cum so-called Assam Forest Check Gate alongside the Golaghat-Wokha road, a point near Merapani village, in between the Nagaland Inner Line Permit Check Gate and the headquarters of the Nagaland Armed Police Company situated at the foothills. These trucks were led by Deputy Inspector General of Police (Border), Assam. The Deputy Commissioner, Jorhat, the Additional Deputy Commissioner, Jorhat, the Sub-Divisional Officer, Golaghat, the Superintendent of Police, Golaghat also came along with the said 17 vehicles carrying Assam Armed Police, CRPF and Home Guard personnel. The civil officials left after some time, but the armed personnel with the assistance of hundreds of local labourers started construction of the said post and/or camp in great haste and the same was

completed in a very short time. In this connection, it may be added that the Assam Police dismantled the house of a Naga, one Dr. Augustine, at the Merapani foothills and removed all building materials therefrom which was used for construction of the new camp. It may be mentioned that this new post and/or camp, the so-called Assam Forest Check Post established by the Assam authorities, situated on either side of the Golaghat-Wokha road near the foothills, was a fully fortified armed camp with bunkers, trenches, etc. It was manned by armed personnel of battalion strength and was equipped with LMGs, 2 inch Mortars and ammunition adequate for waging a war. The Assam Police also constructed two basha houses with defensive earth bunkers around the camp."

The Assam affidavit says —

The Assam position

"That though Assam Government took all effective steps to defuse the situation in Merapani area, the Nagaland Armed Police started checking the Assam Police and forest officers at the Quarantine Check Gate. Reports were also received about a good number of incidents of harassment of the Assamese villagers and the use of fire arms by the Naga civilians and the Nagaland Armed Police. It would be pertinent to mention herein that the Merapani Forest Check Gate which is well within the boundary of Assam had been in existence since a very long time. This check gate was primarily established to control and check movement of the forest produce going through the Golaghat-Merapani-Wokha road. This road is the only recognised route for movement of forest produce from Nagaland as per provisions of Rule 16 of the Transit Rules made under Sections 40 and 41 of the Assam Forest Regulations. In the early part of 1985, the saw millers located at Golaghat asked for permission for removal of timber to Nagaland by the authorised routes including Dhansiri and Doyang. It was found that there was large scale removal of forest produce of Assam towards Nagaland through Wokha-Merapani-Golaghat road. Therefore, it was administratively expedient to activate the Merapani

Forest Check Gate at Merapani within the territory of Assam to watch and control the movement of forest produce of Assam towards Nagaland through Wokha-Merapani-Golaghat road. Therefore, it was decided on 26th May 1985 to shift the gate to a different site, a little southward of the earlier check gate located at the Merapani bazar area with a view to watch and prevent the illegal movement of forest produce of Assam more effectively. At this place, it may not be out of place to mention that even the 1972 Interim Agreement clearly stipulates that the operation and management of the Reserve Forests will vest with the Assam Forest Department. Moreover, Merapani is within the Doyang Reserve Forest of Assam. Therefore, it was necessary to operate and manage the Doyang Reserve Forest through the Merapani route for the purpose of augmenting revenue of the Assam Exchequer. In fact, the Government of Assam never acted in violation of the 1972 Agreement and of the other decisions and agreements arrived at in the meetings of the Chief Ministers, Chief Secretaries, Commissioners and Deputy Commissioners of both States from time to time."

In their counter-affidavit, Assam in substance have stated that the Forest Department of Assam activated the Forest Check Gate about 1 Kilometre from the Merapani Police Station as per normal procedure and at the request of the Divisional Forest Officer, Golaghat. The protection party of Assam Police Battalion was sent along with forest party..... It was decided to deploy 4 platoons of Assam Battalion by 30th May due to intimidation made by Nagaland Armed Police and fear expressed by forest officials. Some of the statements contained in the Nagaland affidavit as to the number of vehicles used by the Assam authorities bringing materials of the 26th May morning or the presence of Deputy Commissioner, Jorhat at the time or that Deputy Inspector General of Police (Border), Assam led this particular party have been denied.

The Nagaland counter-affidavit denies that the Nagaland Armed Police had started checking Assam Police and forest officials at the Quarantine Check Gate. There was no harassment of Assam villagers. It was wrong to say that the Assam Forest Check Gate had been in existence for a long time inasmuch as the forest check gate fully armed came into existence from 26th May 1985. Further, that no forest produce was being transported through the Golaghat-Wokha road and that the objective was to obstruct and harass the movement of Nagaland officials and public and to isolate or

otherwise disrupt communication between the Nagaland Armed Police Companies headquarters at the Merapani village and the Nagaland Check Gate at Merapani and the Nagaland Armed Police post at the seed Farm at Velluguri.

8.3 The indisputable fact that emerges from these accounts is that the Check Gate, whether described as Forest Check Gate or as Border Outpost, was established by the Assam authorities about 1 kilometre away from the Nagaland Check Gate at Merapani in the direction of Nagaland Armed Police Company headquarters at the foothills. It is also clear that about 3 Companies of the Assam Armed Police were positioned in the area about 26th May or within the next few days of it. What were the circumstances which led Assam to take this action? Was it in order for the Assam authorities to have taken this step? Did this in fact escalate the already tense atmosphere? Was it the single biggest factor or the decisive factor which led to the armed conflict? Was this step unavoidable? Would it not have been proper for the two States to meet and discuss the matter at the highest level if it came to that? Should not Assam have suggested such a course of action and awaited the outcome before such action?

8.4 In considering these questions, it will be necessary to go back a little, to say about the beginning of the 2nd week of May, by which time the 1st May Agreement was apparently more or less dead. To use the words of Deputy Inspector General of Police (Border), Nagaland, he had, as directed by the Chief Secretary and the Commissioner, issued orders for withdrawal but this order was not carried out. The Deputy Commissioner, Wokha had wanted the Police Station to be withdrawn also. This the Assam Police could not comply with without their Government clearance and it was unreasonable on the part of the Deputy Commissioner, Wokha to have asked for this. He bemoaned the fact that no action had been taken against the Deputy Commissioner by the Government. The only solution that he saw was that the Nagaland Armed Police should be withdrawn immediately without any condition as ordered by the Commissioner on the 26th April 1985. In passing, he also referred to the Commissioner, Nagaland having asked him on the 26th April 1985 to transfer or change the Company Commander at Merapani as he was party to the mob fury on the 22nd April 1985. The letter went on to say that if anything went out of hand, the blame would be squarely on the Nagaland Police and nobody else.

8.5 Meanwhile, the fencing around the Nagaland Police Check Gate which was to have been removed as part of the 1st May Agreement was, in direct contradiction to this, being further extended around the Check Gate. The Sub-Divisional Officer, Bhandari was informing the Deputy Commissioner, Wokha through his message of 14th May at Annexure 23 of N-VI—that the iron posts for Merapani Check Gate had reached Bhandari-Merapani in the late afternoon. He himself had gone to Merapani and as

per the Deputy Commissioner's letter had asked Superintendent of Police (Border) to carry out the work. The latter was not willing to have this done through Nagaland Armed Police personnel and the work was therefore now to be done by village labourers of Merapani. There is then a subsequent message of 15th May at—Annexure 24 of N-VI—in which the Sub-Divisional Officer informed the Deputy Commissioner that the erection of fencing posts at the Check Gate was being done by the public of Merapani village and Bhandari town. Through another message of 24th May—Annexure 27 of N-VI—he informed the Deputy Commissioner that the half finished police house at Merapani Check Gate had been completed that day by the Merapani village public.

8.6 Deputy Commissioner, Wokha's attitude to the situation that was developing can also be seen in some of the statements made by him in his evidence before the Commissioner :—

"Sitting here today I reiterate my belief that it was Assam that was responsible for this armed conflict. There might have been some factors contributing to the armed conflict from the Nagaland side also but I cannot pinpoint. I and officers working under me might have contributed something knowingly or unknowingly.....

Nagaland Armed Police moved into Inner Line Permit compound on 20th April after the forcible removal of material. They started some construction for their own accommodation, Assam side started opening additional Border Outposts in the area after the 22nd April incident.....

It was not normal for Nagaland Armed Police to march to the Inner Line Permit any time it felt like it. I feel that the protection of the Inner Line Permit is the responsibility of the Nagaland Government and not that of Assam, especially in that situation where some police of Assam had forcibly removed fencing. I think if there is something unreasonable done by the Assam authorities in the Inner Line Permit, while taking up the matter at Government level with Assam, or even bringing it to the notice of Union Government, immediate action by way of deploying Nagaland Armed Police was justified. I am of the same opinion even today. I am aware that if Nagaland Armed Police goes to Inner Line Permit, this is likely to lead to tension.....

A Deputy Commissioner has no authority to withdraw a police post. There was no instruction from my Government that Nagaland Armed Police at Inner Line Permit should be withdrawn only if Assam withdrew the Police Station and other Border Outposts set up by them in violation of the 1972 Agreement. Nor I sought any instruc-

tion on this point because I knew the stand of the Government. I knew the stand of the Government from the various protest notes sent by my Government on various occasions to Assam. The demand for withdrawal of Police Station had first gone from me.....

Demand for withdrawal of Police Station and Border Outposts by me at 19th April meeting was my personal stand as Deputy Commissioner. It was also in agreement with Government stand.....

I was not satisfied with Deputy Commissioner, Jorhat's assurance that this demand (for withdrawal of Merapani Police Station and Border Outposts) be referred to his Government. I would be satisfied only if a final decision was taken. I would then be able to give my reaction. My stand was that unless there was a final decision available from the Assam authority, no decision could be taken on withdrawal of Nagaland Armed Police by me or any Government.....

If Deputy Commissioner, Jorhat had agreed to withdraw the Police Station I would have recommended withdrawal of Nagaland Armed Police to my Government. I myself was not competent to withdraw. I have not ordered their deployment on 20th April or later, I am not supposed to order deployment of Nagaland Armed Police because according to the police set up, this would be for Police authority".

8.7 This attitude of the Deputy Commissioner, Wokha, was certainly of no help in defusing tension. Considering the past history and circumstances attaching the Nagaland Check Gate, it was wrong on the part of Nagaland to have taken up fencing on 20th April without the agreement of Assam. The seriousness of this initial unwarranted and ill-advised act by Nagaland cannot be mitigated even if it is conceded that the action of Assam in seizing the fencing material was high-handed and that there was no F.I.R. by Pauram Kachari thus rendering the Assam action illegal. Similarly, the story made out by Assam about the firing on 22nd being by a G. F. Rifleman although wrong and unfortunate in itself does not legitimise the incorrect and unwise prior act of the Deputy Commissioner, Wokha, in coming to the Merapani Police Station accompanied by senior police officers and talking to relatively junior police officers of Assam. Whatever the surcharged emotion on either side, the views as extracted above of Deputy Commissioner in themselves were a major contributing factor in escalating the problem.

8.8 It is not clear from the evidence that has come before the Commission whether it was the result of the attitude of Deputy Commissioner, Wokha or whether the Assam Government had independently and for other reasons decided on this course of action, but from about the second week of May a stiffening in the stand of the Assam Government is to be seen. As has been noted earlier, whatever might have been

going on at the lower level, the Commissioner, Nagaland had sent a perfectly reasonable message to his counterpart in Assam dated 7th May 1985. He referred to the 1st May Agreement, suggesting simultaneous withdrawal. He clarified that the police forces involved would be those reinforced and deployed after 20th April—thus overruling Deputy Commissioner, Wokha's insistence on withdrawal by Assam of the Merapani Police Station and Border Outposts.

8.9 There was no response to this by the Assam side. It seems that the Chief Secretary of Assam had decided to undertake a rather prolonged tour of the border areas and he was at Jorhat on the 12th May. He visited Merapani on the 13th May along with Commissioner, Upper Assam Division. On this specific message of 7th May from the Commissioner, Nagaland, it might be useful to reproduce part of the evidence of Shri M. S. Pangte, Commissioner, Upper Assam Division at that time. It might be mentioned that Shri Pangte was Commissioner, North Assam Division and was holding additional charge of Upper Assam Division consequent on the regular Commissioner Shri R.N. Muhuri proceeding on leave on the 8th May i.e., just 4 days earlier. This is what he said :—

"The message at A 24 dated 7th May in A-III from Commissioner, Nagaland, was seen by me on 12th May. I do not know when it was received in the Office. I was staying in the Circuit House and that was where the message was seen by me. There should be a record in the Commissioner, Upper Assam Division's office as also the W.T. office to show when this message was received in the office of the Commissioner, Upper Assam Division. When I met the Chief Secretary on 12th May along with other senior officials, I apprised him of the contents of this message. Since the reply was not asked for, I did not send the reply. Further, I was told by the police and civil officers that Nagaland side is not cooperating in implementing the decision of 1st May 1985. I was told that our officers are already on the job to implement the decision of 1st May 1985. I did not fully agree to the suggestion of Commissioner, Kohima to the extent that other items of the agreement reached between the police officers had been omitted for reasons not known to me. I was not inclined to agree to withdraw because it would be only one part of the implementation of the agreement of 1st May.....

I could have sent a reply that my officers have already on the job in implementing the agreement."

8.10 The 7th May message was apparently discussed with the Chief Secretary. Shri Pangte had also discussed this message with Deputy Inspector General (Eastern Range), Shri Sumant, as it clear from his evidence. The fact that there was no formal response is indicative of Assam having decided to abandon further negotiations or discussions which in their read-

ing, were leading nowhere and strengthen their armed presence in the area. This approach is to be seen in the recommendations made by the Chief Secretary to the Chief Minister on his return to headquarters; on the suggestion made by the State Forest Minister to Chief Minister in a note of 18th May 85; and finally, in decisions taken at a meeting taken by the Chief Secretary on 21st May 85.

8.11 The Merapani situation is discussed thus in Chief Secretary's tour note of 20th May—pages 95—96 of A VI :—

"I" reached Jorhat on 12th May 1985 and held discussion with the Commissioner, Upper Assam Division, Inspector General of Police (Border), Deputy Inspector General of Police (Eastern Range), Conservator of Forest Upper Assam Circle, Deputy Commissioner, Jorhat, Superintendent of Police, Jorhat and others regarding the border situation. I visited Merapani on 13th May 1985. The Nagaland Government has constructed a permanent fencing all round its civil police check post at Merapani. The fencing has been constructed fixing iron posts on R.C.C. foundation, and it is reported that land belonging to forest villagers has been encroached. All these have been done under the protection of one and half platoons of Nagaland Armed Police which was inducted in this area without our concurrence. The situation is quite tense. The local people reported to me that on the date of my visit, about 250 Nagas coming in a procession to Merapani had taken away about 50 heads of cattle. However, before I left Merapani I was informed that the cattle had been released by the Nagaland police. The local people complained that the Nagaland Armed Police entered into their villages and assaulted them off and on and they did not get protection from the Assam Police.

The situation in Merapani deteriorated very fast after the incident on 22-4-85. The Deputy Commissioners of two districts have not been able to defuse the situation. The Deputy Commissioner, Wokha is reported to be very non-cooperative and aggressive. The two Commissioners have not been able to meet. The matter should be discussed in the Commissioner level meeting which is proposed to hold in Dimapur in presence of the Central Observer and steps should be taken for dismantling the fencing constructed at Merapani civil check post and for withdrawal of Nagaland Armed Police."

8.12 In his evidence, Shri A. K. Pulit has referred to a discussion he had with the Chief Minister on the telephone on the 19th May 1985 about the situation on the Border :—

"I returned from my tour from Upper Assam on the evening of 17th May 85. On 18th May '85 throughout the whole day I was busy

and away from the Secretariat in the Joint Cadre Meeting with my Meghalaya counterpart in the State Guest House. On the 19th of May, if I remember aright, the Chief Minister returned to headquarters perhaps from a tour. I had a discussion with the Chief Minister on the telephone on the 19th of May 85 about the situation of the border. I gave my assessment to the Chief Minister. I also informed the Chief Minister that during my brief visit to Merapani I received a memorandum from the villagers.....

Villagers reported to me which was confirmed by police officials at Merapani that about 250 or so Nagaland people had come down from the hills to the Merapani bazar and had driven away 50 heads of cattle in the morning of that day. They also reported various other matters as stated in their memorandum. I asked the police officials to get in touch with Bhandari, Nagaland for obtaining release of the cattle. I was informed within a short period that the cattle had been released and sent back to Merapani. I also informed the Chief Minister that the local people were highly apprehensive of some kind of Nagaland raid in Doyand Reserve Forest to drive them out. There were also similar reports of apprehended raids along the border.....

I felt the necessity of sending additional police personnel to Merapani to generate a feeling of confidence among the villagers against any kind of raid by villagers from Nagaland. The Chief Minister agreed with me that some police force should be sent to Merapani. I also told him that I would seek the advice of my other senior colleagues as to the measures to be taken to deal with the situation. This is the background in which a meeting was called on 21st May 1985 in my office chamber to discuss the Assam-Nagaland border....."

8.13 The State Forest Minister of Assam had also visited Jorhat for 2 or 3 days on the 16th May. His note recorded after this visit and dated 18th May for consideration by the Chief Minister is added as Commission's Exhibit XV. It is clear from the note that the State Forest Minister visited the Merapani areas as per directions of the Chief Minister. He gives an account of the events that had taken place starting with the 20th April fencing by the Nagaland authorities at their check gate and then the 22nd April occurrence, as reported to him and so on. Also, the agreement of 1st May and its fate. The important part of his recommendation is as below :—

"I feel it is necessary to review the situation and take some effective steps so that Nagas cannot intrude in our territories in blatant violation of the Agreement. Local officers including Commissioner, Deputy Commissioner, Superintendent of Police,

and Conservator of Forest, Eastern Assam Circle and others feel that if as a counter measure a Forest Check Gate is established (backed by a police party for safety of the forest personnel) on our own forest land at a place about 1/1½ Km. towards foothills from Merapani Police Station, perhaps we may have a bargaining point in that step for compelling Nagaland Government to have their Nagaland Armed Police personnel withdrawn from the Quarantine Check Gate, as it is presumed that in our establishing the Forest Check Gate as aforesaid there will be obviously some protest from the Nagaland Government. Chief Minister may like to decide what action would be better in the present context of the matter."

8.14 Minutes of the meeting referred to by Chief Secretary, Assam, in extract of his evidence reproduced above dated 21st May 1985 are Commission's Exhibit XXXIV.

8.15 The Chief Secretary had at the outset at this meeting indicated that the situation in the Merapani area was tense, the line of communication between the Assam Commissioner and Deputy Commissioner and their counterparts in Nagaland appeared to have broken down, the position adopted by the Government of Nagaland had become increasingly rigid, their attitude and the sequence of events was similar to that of 1979, the Nagaland Armed Police was in strength in Merapani and in an offensive posture and thereafter there were reports of the possible movement of Naga people from across the border to forcibly occupy Merapani bazar. The Minutes show that after some discussion, it was decided that the Assam Police personnel at Merapani should be strengthened if necessary with additional armed force to indicate the resolve of the Assam Government and to protect the property and interest of the people living inside the territory of Assam.

Following this meetings, there was a D.O. letter sent to Deputy Inspector General of Police (Eastern Range) at Jorhat by Inspector General of Police (Hqrs.) through special messenger dated the same day viz., 21st May, 1985. This may be seen at pages 106 and 107 of A-VI. The relevant portion is reproduced below :—

"It has been decided to post 3 Coys of Assam Police Bn. in Merapani so that the attempts of the Wokha admn. to forcibly occupy the area are thwarted. These 3 Coys should be deployed by you around the Merapani Police Station, Civil Check Post of Nagaland and adjacent areas. The Coys should take position and be fully prepared to meet any challenge from Nagaland Armed Police. Our Assam Police Bn. personnel must however be instructed that they should not open fire till fired upon by the Nagaland Armed Police.

The Secretary Forest Deptt. has instructed the Conservator of Forests, Jorhat, to extend

help in construction of accommodation etc. for the force being sent for the purpose. Needless to say, you will have to personally ensure proper tactical deployment, preparation of strong bunkers and effective supervision of the duties of the Assam Police Bn. Coys being sent to Merapani."

8.16 There is then a message, again dated 21st May 1985 from the Forest Secretary to the Conservator of Forest, Eastern Assam Circle—page 109 of A-VI:—

"Kindly take all steps to arrange accommodation and extend all help as may be necessary to the police personnel being posted in Merapani and adjoining areas of the Doyand Reserve Forest. Since movement of troops is to take place soon, kindly attend to this most urgently. Kindly issue suitable instructions to the Divisional Forest Officer and liaise with Dy. Inspector General (Eastern Range)."

8.17 In none of these three-minutes of the meeting of 21st May, Inspector General of Police (Hqrs.) D.O. letter to Deputy Inspector General of Police (Eastern Range) dated 21st May or Forest Secretary's message to Conservator of Forest, Eastern Circle, dated 21st May—is there any mention of setting up of a Forest Check Gate on the Golaghat-Wokha road or any reference to a decision to that effect. The first document apart from the note of State Forest Minister of Assam which refers to this aspect of the matter is Deputy Inspector General of Police (Eastern Range) reply to the D.O. letter of Inspector General of Police (Hqrs.) of 21st May. This reply is through a D.O. letter dated 25th May 1985, again sent through a special messenger and available at—pages 108 and 108A, of A-VI. Relevant extract is as under:—

"On 23rd May 1985, the Secretary Forest Assam came to Golaghat and as advised by the Chief Minister, Assam, I had a meeting with him at Golaghat. We also visited Merapani and went up to the foothills area. The Forest Department was proposing to set up a Check Gate on the Merapani-Wokha road nearer the district/State boundary and beyond the Nagaland Quarantine Check Gate. We were requested to provide adequate protection for the gate.

On a recce of the area, it was seen that the non-Naga population extended to about 1½ to 2 Kms. from the present Merapani Police Station. Beyond that point there was vacant land and then the Naga settlements start around foothills area of Nagaland. It was therefore decided to deploy a Coy of Assam Police Bn. at a site on this vacant land on either side of the road and afford protection for the Forest Check Gate and for the non-Naga population of the area. Deployment of the Coy at this site would also be helpful in preventing and advances or attempts made by the Wokha Admin. of Nagaland to forcibly occupy the area.

Accordingly, the area was recce and a suitable site was selected. The Sector Commander, 'D' Sector, in whose area this place falls, was also briefed accordingly. The Forest Deptt. are also making arrangement for construction of Border Output accommodation for the purpose at this site...."

8.18 The District Forest Officer, Golaghat, through a message of 26th May to Deputy Commissioner, Jorhat, and copies to all concerned—Annexure 106 of A-II—reported the establishment of a Forest Check Gate on the 26th May at Merapani on N.E.C. road for checking of forest products and requested for police protection to the forest staff on duty.

8.19 The Deputy Commissioner, Jorhat, sent a message on 26th May (P 115, A-VI) to the Assam Government with copies to various officers concerned as follows:—

"One Forest Check Gate between Merapani and foot-hills on the N.E.C. Road within Doyand Reserve forest has been established by our Forest Deptt. this morning (26-5-85). This Check Gate is about ½ km. inside Doyand Reserve Forest from the foot-hills and about 1½ Km. from Merapani Police Station. On request of District Forest Officer, Golaghat, police security provided to the forest staff on duty. Prior to 1979, there was a Forest Check Gate of Assam Forest Department more or less at the same site. Said old check gate was reportedly abandoned for want of adequate security. Situation peaceful so far and P/M continuing. Detailed report follows."

8.20 It is clear from the documents referred to above that certainly by the 23rd May 85, a decision had been taken by Assam to set up a Forest Check Gate on the Golaghat-Wokha road well beyond the Nagaland Civil Police Check Gate in the direction of Nagaland and also reinforce the Merapani area by sending three additional Companies of Assam Armed Police. It is clear from Deputy Inspector General of Police (Eastern Range), Shri Sumant's letter at—pages 108 and 108A in A-VI—dated 25th May 85 that one of these Companies was to be located at the Forest Check Gate for appropriate protection and so on. It would be fairly obvious from this that there was really one basic decision taken by the Assam authorities—to the effect that the armed personnel of Assam in the Merapani area should be increased and further, that there should be a barrier whether called a Forest Check Gate or not set up on the Golaghat-Wokha road as part of this reinforcement.

8.21 Some confusion has been caused about what exactly was the meaning of the Forest Check Gate because of various different messages that were sent by for example the Deputy Commissioner, Jorhat about this time. Reference to this Forest Check Gate by him was to explain that it was merely a revival of an old Check Gate that had existed and the intention was only to better enforce the provisions of the

Forest Regulations. It was not a massive armed fortress or any thing of that kind and according to him need not cause any apprehension on the part of Nagaland. On the other hand, the reaction of the Nagaland authorities was that this was not a Forest Check Gate but a barrier with massive armed support to deal with and prevent free movement of the Nagaland officers and also the Naga people on this road and in the general area. In fact, it was considered a grave provocation by them meant to cut off communications between the Nagaland Check Gate and the Nagaland Armed Police Company headquarters at the foothills as also the Nagaland Armed Police contingent posted in the Velluguri Seed Farm. In one of his messages at—Annexure 67 of N-I—dated 27th May to Deputy Commissioner, Jorhat, the Deputy Commissioner, Wokha had wanted to know the intention behind this offensive operation which looked like an undeclared war operation against Nagaland. He referred to two new Check Gates opened by Assam and guarded by a Company of armed police on both sides of the Nagaland Police Check Gate and therefore, practically effecting a blockade of the Check Post.

8.22 The evidence of Shri Sunddhar Doley, District Forest Officer, Golaghat who appeared as an Assam witness also shows that this was not a Forest Check Gate in the true sense but a major armed police presence at the spot. He referred in his evidence to a number of barracks of size 40' x 17' which were to be built at this Check Gate. In fact, some of them had been built by the time that the armed conflict took place. The size of these barracks suggested that the number of people to be housed in them would be very large and certainly much more than the 7 to 11 people who are normally required by the Forest Department to man such Check Gates. Actually, that even these 7 to 11 forest personnel had not been posted at the Check Gate by the time that the conflict took place is clear from the evidence of Shri K. K. Baruah who was then Forest Secretary Assam. It is also accepted by Assam witnesses that there were LMG positions, bunkers, trenches etc. in this post. Clearly therefore, this Check Gate was not really a Forest Check Gate but a Police Post of substantial strength and size intended to establish Assam's superior armed position in the general Merapani area and block free movement if so required.

8.23 Some confusion has been caused because of the stand taken by Assam before the Commission which seeks to make a distinction between the Forest Check Gate and the sending of police reinforcements to the area. It is contended that the decision taken at the 21st May meeting was only that police reinforcement should be sent and that while there was some general discussion about the Forest Check Gate, there was no decision taken at the official level that such a Check Gate should in fact be set up. In fact, the general opinion was against it. Not only this, it is conceded by Assam that the decision to set up a Forest Check Gate was not a very sound or mature decision. Further, that the establishment of the Forest Check Gate provoked the Nagaland Government to a certain extent and caused misgivings in the minds of the Nagaland Government and its people. It was an

avoidable issued. The decision was taken by the then Chief Minister who was also Forest Minister in consultation with Shri K. K. Baruah, the then Forest Secretary. In support of this stand, it has been argued by Assam that there is no mention in the minutes of the 21st May meeting of any decision to set up a Forest Check Gate and, secondly, it would be clear from the evidence tendered by Shri A. K. Palit, the former Chief Secretary, Shri G. S. Pathak, the then Director General of Police, Shri P.V. Sumant, Deputy Inspector General of Police (Eastern Range) that the decision was taken at a forum other than this meeting or at the level of these officers.

8.24 It is not really clear to the Commission as to why this distinction in the two parts which seem to constitute the same decision is sought to be made: possibly, because there was a tremendous reaction on the part of the Nagaland authorities immediately after the Forest Check Gate had been set up, and the state of tension persisting in the area had been raised to new levels as a result. There were a number of messages exchanged between the Deputy Commissioners the tone and substance of which represented an almost hysterical reaction on the part of Nagaland and a rather casual and unconcerned attitude on the part of the Deputy Commissioner, Jorhat. The same seemed to be the attitude at the Commissioners level also. Going by the messages sent by Deputy Commissioner, Wokha a number of attempts were made by him to meet the Deputy Commissioner, Jorhat so that the matter could be discussed. There does not seem to have been any particular anxiety on the part of the Deputy Commissioner, Jorhat to respond to these messages. It is possible because of the eventual repercussions of this Forest Check Gate that there is an odd reluctance on the part of Assam officers to acknowledge any participation in the decision making that led to its establishment. It is necessary therefore to see what the evidence brings upon this score.

8.25 The fact that the question of setting up of the Forest Check Gate came up at the 21st May meeting has been acknowledged by a number of witnesses including the Chief Secretary himself. The relevant part of his evidence is as follows:—

"On the 21st May meeting, the question of setting up of a Forest Check Gate came up for discussion as it was also mentioned in the memorandum submitted to the Chief Secretary. The Forest Deptt. wanted to revive the Check Gate for various reasons. No decision was taken at the meeting to revive the Check Gate. My view was that the Check Gate would be close to the border and I was not in a position to foresee its impact. I could not recommend establishment of the Check Gate. There was no consensus for setting up the Check Gate in the meeting. But I said that I leave it to the Forest Deptt. to discuss the matter with the Forest Minister who was also the Chief Minister and take decision. Since there was no consensus, the matter was not mentioned in the minutes. I had no opportunity

to meet the Chief Minister and discuss the matter further with him. I cannot say why I was unable to see Chief Minister on the 21st or 22nd.....

I had no discussion after the meeting of 21st May with Secretary Forest or any other person. I would like to say that I am not aware at what level actually the decision was taken to set up the Forest Check Gate."

8.26 In cross-examination, Shri Palit said :—

"The question of setting up of Forest Check Gate was not in the agenda of the meeting of 21st May 85. As a matter of fact, there was no agenda at all. I did not favour the setting up of a Forest Check Gate. I did not know the location of the Forest Check Gate. When the matter came up for discussion, I said in my evidence that in the meeting of 21st May 85 no decision was taken about the establishment of the Forest Check Gate. I did not at all come to know of the decision to set up the Forest Check Gate. I learnt about the establishment of Forest Check Gate after it had been set up.....

I had no curiosity or desire to know the authority (Level at which decision was taken). I do not know even today who took the decision. I was the highest officer in Assam. At my level decision was not taken. There is an allocation of business between the Depts. All decisions were not necessarily reported to me. I cannot say if the decision to set up the Forest Check Gate was taken by the Cabinet or the Chief Minister.

It is not the normal feature of the admin in Assam that the Chief Secretary would be ignored or by passed in taking important decisions. The decision taken for the setting up of the Forest Check Gate was an important one.....

At the meeting held on 21st May 85, it was decided to strengthen Assam Police forces at Merapani. Sending of these additional forces had nothing to do with establishment of the Forest Check Gate..... The only reason for sending additional forces to Merapani particularly, was to generate confidence among the people in view of the apprehension of a raid by Naga villagers.

I deny your suggestion that the real intention of the Govt. of Assam was to surround the Inner Line Permit Check Gate, prepare for a show-down with Nagaland and drive Nagas from Doyang Reserve Forest to their hills....."

8.27 It is clear from the evidence of the Chief Secretary that the question of setting up of the Forest Check Gate was in fact discussed. According to him the Forest Department wanted to revive the Check Gate for various reasons. He was opposed to the

move. Further, that the decision was not taken by him. And he was not aware as to who took the decision. In fact, he came to know of the establishment of the Forest Check Gate after it had been set up.

8.28 Shri J. S. Pathak, Director General of Police, at the time attended this meeting of 21st May. His recollection of this matter in his evidence is as below :—

"The main thrust of the discussion was improving the panicky situation in the Merapani area that was gathering momentum. Most of the officers that took part in the meeting expressed their view. The meeting decided to send some reinforcement to the Merapani area. There was a consensus on this point. The matter of setting up of a Forest Check Gate was discussed in that meeting. Most of the officers expressed their views on this point also. The Forest Secretary also expressed his views. My view was not in favour of establishing a Forest Check Gate. My main concern was how to remove the panic from the civil population. I felt that this Forest Check Gate would be adding to the problem. To remove civilian panic, I wanted more police Coys to be located in the area. My impression of the meeting is that on this point of setting up of Forest Check Gate, there was a general consensus that this should be done, in other words, my impression was that all participants in the meeting were in favour. If the Chief Secretary says that there was no consensus I do not know but my impression was that there was a consensus. I do not remember whether Chief Secretary said at the meeting that he left this matter to be discussed by the Forest Deptt. with the Forest Minister."

8.29 In cross-examination :—

"I do not remember who first took up the matter of Forest Check Gate being set up, might have been the Forest Secretary of the Chief Conservator of Forest. The pros and cons of setting up this Check Gate were discussed. I had in clear terms opposed the setting up of Forest Check Gate because of paucity of force. I also said that if at all the Forest Check Gate is to be set up, force for its protection should be taken from the 3 Coys I was sending to the Merapani area.....

The Chief Secretary and I were against the setting up of the Forest Check Gate. At this stage, I cannot say who were the others in favour of its being set up giving me the impression that there was a general consensus in favour....."

8.30 Inspector General of Police (Border). Shri Kharakwal also attended the meeting. This is what he says in his evidence :—

".....At the meeting on 20th and 21st May developments from March 85 onwards in

particular were noted and it was decided that all necessary steps should be taken to protect Assam's interest. It is correct that it was also decided to induct a contingent of armed police for this purpose and locate it at the Forest Check Gate which was also to be set up. It would be correct to say that it was considered at the meeting that Assam should have a Check Gate ahead of the Inner Line Permit Check Gate towards the foothills.

The grounds for locating the Forest Check Gate at the point where it was located were the availability of vacant land and also keeping at the point not too far away towards the foot-hills. The decision was made by the Forest Secretary and Deputy Inspector General (Eastern Range). I approved this....."

8.31 Shri Kharakwal was re-called for some further information and clarifications. On that occasion, with reference to the 21st May meeting he said :—

".....At the meeting taken by Chief Secretary on 21st May there was some vague discussion on the setting up of a Forest Check Gate. Different people had different views. The Forest Secretary did not say anything clearly. I had said that we should avoid confrontation. My views on the setting up of Forest Check Gate was not asked. No decision was taken on the setting up of a Forest Check Gate. I do not remember what views the Chief Secretary had on the setting up of a Forest Check Gate....."

8.32 Shri Pangte who was holding extra charge of Upper Assam Division says in his evidence :—

"I came to know of the decision to set up a Forest Check Gate on 24/25th May from Deputy Commissioner, Jorhat, and Dy. Inspector General (Eastern Range) who informed me that Secretary Forest had visited the area in this connection....."

I was not consulted prior to the taking of this decision. I learnt that there was a meeting on 21st May at Govt. level where this decision was taken. The meeting was presided over by the Chief Secretary.....

I am aware that the Forest Check Gate was set up on 26th May. This I came to know subsequently....."

8.33 Shri Pangte denied that the State Forest Minister on his visit to Golaghat and Merapani had consulted him regarding the advisability of setting up of a Forest Check Gate.

8.34 Shri Sumant, Deputy Inspector General of Police (Eastern Range) says that he was told by the Inspector General of Police, Shri Samar Kumar Das (deceased) on 21st May that there was a decision at

Government level to set up a Forest Check Gate at Merapani. This was the first time that he came to know of this decision. He was informed that the Forest Department would be setting up a Forest Check Gate and he was to provide protection for which force was being sent. With reference to Inspector General of Police (Hqrs.)'s D.O. letter of 21st May in which no reference was made to the Forest Check Gate but only to 3 Companies being sent, he says :—

"I felt that with this deployment of force there could be a reaction from the Nagaland side for which the forces when deployed should be prepared. As a result of this deployment, I expected strong reaction from the Nagaland side, but did not anticipate that they would go to the extent of over-running the area or to forcibly occupy the area. There is no mention of setting up of a Forest Check Gate at Merapani in this letter. I linked this letter of 21st May with Shri Das's telephonic conversation with me on 21st May because he had said he would be sending a D.O. letter on that day conveying these instructions....."

An element of this force was sent to the Forest Check Gate to locate themselves near the Gate for the protection of the forest staff. By an element I mean one Coy of force. One Coy would be roughly 75 persons. Barracks were built for the accommodation of these forces on the left side of the Golaghat-Wokha road proceeding from Golaghat.....

In pursuance of directions for the preparation of strong bunkers..... I had asked the existing posts to strengthen their bunkers to bring it to standard and similar bunkers were also made in the defensive wall around the Coy located near the Forest Check Gate.....

Earthen walls were put up to facilitate this protection. The structure put up by the Forest Deptt. to accommodate their staff would have been adequate to accommodate about 10 or 12 persons. The earthen wall on the right side of the road was for the protection of police personnel performing guard duties on that side. Along the protective wall on the right, a communication trench was also dug.....

When I met the Secretary Forest at Golaghat on 23rd, he informed me that the Forest Deptt. would be setting up a Check Gate on the Golaghat-Wokha road. He also took me to Merapani and showed the location where the gate would be set up and asked for necessary protection to be provided. On 22nd May Chief Minister, Assam came to Jorhat and as per normal procedure I called on him. He told me that the Secretary Forest would be coming to Golaghat the next day and I should meet him. He further said that Secretary Forest

would be conveying some instructions which should be acted upon....."

8.35 Shri K. K. Baruah, the then Forest Secretary, was called as a Commission witness. His evidence in substance is that the Forest Check Gate at Merapani was set up probably under the orders of some forest district officer; he came to know from the Chief Conservator of Forest and the Deputy Commissioner, Jorhat that a Check Gate had been set up. He had attended the 21st May meeting and the discussion was about sending extra police force to the Merapani area. The Forest Department were requested to arrange their accommodation. The question of a Forest Check Gate being set up was not discussed. If it was mentioned no decision was taken. If there was a decision he was not involved in it. He did not remember what the views of the Chief Secretary of the Director General of Police were. The Chief Minister had never spoken to him about the setting up of a Forest Check Gate. Deputy Inspector General of Police (Eastern Range) had told him that the Chief Minister had asked him to see him and that he would be passing out some message to Deputy Inspector General of Police (Eastern Range). On the 23rd, through Deputy Inspector General of Police (Eastern Range) he came to know that forest officers had decided to shift the Forest Check Gate to a new place and he was shown the site. He advised them not to set up the gate in that area because that place flooded during the monsoon time. Decision to set up a Forest Check Gate was not taken by him. It could not have been taken by the Chief Minister because he would then know of it as Forest Secretary. No new staff was sanctioned to his knowledge for posting at the Forest Check Gate. His Department did not take any decision whatsoever about the setting up the Forest Check Gate.

8.36 It is rather significant that none of these officers accepts that he had anything to do with the decision to set up the Forest Check Gate. All acknowledge that the matter came up for discussion at the 21st May meeting. The picture thereafter is however confusing. The Chief Secretary says that he was against the setting up of Forest Check Gate. He left it to the forest department to discuss with the Forest Minister who was also the Chief Minister, that he was not aware as to at which level the decision was taken and in fact came to know of the setting of the Forest Check Gate after it had been set up. He is quite clear that there was no consensus for setting the Forest Check Gate at the meeting. It was because of lack of consensus that according to the Chief Secretary, the matter was not mentioned in the minutes. He had no curiosity or desire to know at what level the decision was taken. He accepts that it is not the normal feature of the Assam Administration that the Chief Secretary should be ignored or by-passed in taking important decisions. He further accepts this to be an important decision.

8.37 On the other hand, the Director General of Police Shri Pathak clearly said in his evidence that his impression of the meeting was that on this point of setting up of Forest Check Gate, there was a general consensus that this should be done; in other words,

his impression was that all participants in the meeting were in favour. As far as he is concerned, he was not in favour of establishing the Check Gate as he felt that it would add to the problem in the area. To remove civilian panic, he wanted more police Companies to be located there. Thereafter, in his cross-examination he contradicts his earlier evidence by saying that the Chief Secretary and he were against the setting up of the Forest Check Gate. This would surely mean that there was no consensus at the meeting which he had earlier testified to.

8.38 Shri Kharkwal, Inspector General of Police (Border) at the time says that it would be correct to say that it was decided at the meeting that Assam should have a Check Gate ahead of the Inner Line Permit Check Gate towards the foothills. On recall however, when some further information had to be secured from him, he referred to the discussion of the setting up of the Forest Check Gate as being vague. His own views were that confrontation should be avoided although his views on the Forest Check Gate were not specifically asked for. No decision was taken for setting up of the Check Gate. He is unable to recollect what views the Chief Secretary had.

8.39 In his evidence, Shri K. K. Baruah, then Forest Secretary is quite confusing. His main thrust is to say that he took no part in taking any decision. As far as he is aware the Chief Minister also at no time had spoken to him about setting up of a Forest Check Gate. He acknowledges that he went to Merapani on 23rd May and met Deputy Inspector General of Police (Eastern Range). He came to know that the forest officers had decided to shift the Forest Check Gate to a new place and he was shown the site. He advised them not to set up the gate in that area because of flooding etc. The decision to set up the Forest Check Gate was not taken by him, nor by the Chief Minister as in that case he would have known.

8.40 This evidence of Shri Baruah is contrary and confusing. Firstly, the Chief Minister and he are not involved although the Chief Minister was the Forest Minister who in his capacity as Chief Minister had approved the minutes of the 21st May meeting and he, i.e. Shri Baruah was the Forest Secretary. Secondly, his evidence is in direct contradiction to the evidence of Shri Sumant, Deputy Inspector General of Police (Eastern Range) who says that the site for the Forest Check Gate was selected by Shri Baruah. Shri Sumant in his evidence not only speaks of the Forest Secretary coming and more or less directing the establishment of the Forest Check Gate at the given site but also refers to the telephonic talks that Inspector General (Hqrs.) S. K. Das had with him at the 21st May, the very day of the meeting. In this talk he had referred to the setting up of a Forest Check Gate.

8.41 Shri Pangte, Commissioner, Upper Assam Division said that he had nothing to do with this decision. He was not consulted by the State Forest Minister about the advisability of setting up of Check Gate. It might be as well to go back to his evidence on this point:—

.... I cannot say whether the Assam Govt's intention on finding that the Nagaland Armed Police had not withdrawn from the Inner Line Permit was to pressurise the Nagaland Govt. to do so by setting up a Forest Check Gate with a heavily armed presence there. I was not aware of a visit of Minister of Forest on the 16th May to Merapani. I learnt about it subsequently. Prior to 16th May I did not have any discussions with Minister of State for Forest about the border, although I met, him on 15th evening in the Circuit House, Jorhat and informed him about my taking over charge. The meeting with Minister was not pre-planned, but since he stayed next door to me in the Circuit House so it was a meeting basically in the nature of a courtesy call. Shown Commission Exhibit XV—is a note dated 18th May 85 written by the Minister of State Forest to the Chief Minister, Assam, portion at page 4 of this note side lined C—It is not correct that Minister had any such consultation with me. It is true that the letter is dated May 18th and is with reference to the Minister of State Forest visit to Merapani on 16th May when I was Commissioner, Upper Assam Division, but I had left Jorhat for Tejpur some time before noon on the 16th May 85 and returned to Jorhat only after the Chumkedima meeting. I do not agree that *prima facie* reference to Commissioner in portion side lined C referred to me although I had met the State Minister of Forest on the 15th evening. It is incorrect that I as a senior officer of the Govt. was aware from long before of the fact that the Forest Check Gate would be set up and of the reason for which it was being set up and that the whole thing was master-minded from Gauhati. I became aware of the facts in detail relating to the Forest Check Gate only through the minutes of the 21st May meeting which I saw in November 1985 or so."

8.42 The contemporaneous documents in the shape of the minutes of 21st May meeting and the immediately following letter of Inspector General of Police (Hqrs.) of the same day to Deputy Inspector General (Eastern Range) are silent about the Forest Check Gate. They refer to only strengthening the armed police in the Merapani area. On the other hand, there are two documents which make a reference to the Forest Check Gate. One is the note of the State Forest Minister of 18th May where, as he puts it—on the basis of advice of the local officers he recommends the setting up of Forest Check Gate which could serve as a bargaining point with Nagaland for withdrawal of their Nagaland Armed Police and so on. The second document dated 25th May refers to the Forest Check Gate although Deputy Inspector General of Police (Eastern Range) the author of this letter does not make any reference to a telephonic talk of 21st May which Inspector General of Police (Hqrs.) according to him had with him on that day.

8.43 It is unfortunately a fact that for some time now there has been a tendency on the part of the political executive in the States to ignore or belittle the advice of civil servants. The Government of Assam could have been no exception to this trend nor for that matter would the Nagaland Government also be an exception. The Commission is however not prepared to accept that events had reached such a pass in Assam that a decision of such major import as undoubtedly the Forest Check Gate decision was, could have been taken by the Forest Minister or the Chief Minister without consulting officers dealing with the subject. It is inconceivable, therefore, that the Chief Secretary was not consulted or was ignorant of the decision that was taken. It is equally inconceivable that the Forest Secretary who fumbled in his evidence, adopting all kind of positions, was unaware of the same decision. It is another matter what the views of these officers were.

8.44 Taking the evidence as a whole, the strong probability is that the decision to set up a Forest Check Gate was taken on a recommendation to that effect made at the 21st May meeting and not later at a different forum. There is reference by the Deputy Inspector General of Police (Eastern Range) to a telephonic talk with the Inspector General of Police (Hqrs.) on 21st May where the Forest Check Gate was mentioned; there is the categorical statement of the Director General of Police Shri J. S. Pathak in the first instance that there was a consensus that the Forest Check Gate should be set up; Inspector General of Police (Border) at the time, Shri Kharakwal also clearly says that it was decided to set up a Forest Check Gate at this meeting. In fact, he has even said that the meeting itself had decided that the Check Gate should be ahead of the Inner Line Permit Check Gate towards the foothills. There is then the very strong probability mounting to certainty that apart from the Chief Secretary's own impressions gathered on his tour of the Merapani area, the State Forest Minister's recommendations were the basis for discussions at the meeting—his recommendation that the Forest Check Gate might be set up so that it could be used as a bargaining point for compelling Nagaland Government to withdraw Nagaland Armed Police personnel from the Quarantine Check Gate.

8.45 The two communications from the Deputy Inspector General (Admn.) and the Inspector General of Police (Border) dated 1st and 3rd October respectively and to be seen as Commission Exhibits XXXI and XXXII are also significant. It seems that the minutes of the 21st May meeting although approved by the Chief Minister two or three days later were received by these officers towards the end of September 1985. Here is what the Deputy Inspector General of Police (Admn.) has to say in Commission Exhibit XXXI:—

"The Director General of Police has asked me to point out that the minutes do not specifically mention about the orders of the Chief Secretary to the Forest Secretary that he should open a Forest Check Post at

Merapani with a strong Armed Police backing. In pursuance of this decision, the Secretary Forest proceeded to Jorhat and along with the Deputy Inspector General (Eastern Range) sited the Forest Check Post at Merapani and we sent additional force to Merapani for Forest Check Post.

.....The Secretary Forest duly mentioned this point in the meeting at the office chamber of Chief Secretary recently....."

8.46 Similarly, Inspector General of Police (Border) in Commission Exhibit XXXII stated :—

"....The introductory para of the minutes shows the extraordinary situation existing in the Assam-Nagaland border in May 85. But it does not mention about the consequential step of Forest Check Gate started in the last part of May 85. I feel a reference to this step which I am told was decided in the meeting of May 21st may be necessary. The Secretary Forest had also recently stated in a meeting in the chamber of the Chief Secretary that the decision to open a Forest Check Gate at Merapani was taken on 21st May 85."

[Shri Kharakwal, Inspector General of Police (Border) at the relevant time had been transferred and this particular letter of 3rd October has been written by Shri S. V. Subrahmaniam who succeeded him.]

It is true that this Commission had been set up by the Govt. of India before these two letters were written. However, there is no reason to doubt their contents particularly, in view of the fact that the minutes of the meeting were received by them only a few days earlier.

8.47 As to whether the Commissioner, Upper Assam Division, Shri Pangte, had given his views on this point to the State Forest Minister on the 15th May evening or 16th May morning before he left for Tezpur, the position is not clear. On the one hand, we have a clear statement contained in the note of the State Forest Minister of 18th May which refers to the Commissioner being one of the officers suggesting the Forest Check Gate as a counter measure. On the other hand there is the evidence of Shri Pangte which suggests to the contrary—he says that he called on the Forest Minister on the 15th evening and left before mid-day of 16th May and did not discuss this issue at all. It would also be reasonable to accept that the State Forest Minister would have a formal meeting or a general discussion with officers on this subject after his visit to Merapani. If he went to Merapani on the 16th even in the morning, this discussion then took place after Shri Pangte had left.

8.48 In any event, the issue of who took this decision is not really relevant. It has been dealt with at some length because the point was made by both sides with a great deal of vehemence, probably because one of the terms of reference posed to the Commission is to go into any dereliction of duty or lapses on the part of officers including uniformed forces of the State. What is relevant is the decision itself. This was a decision taken by the Assam Government. It is immaterial at what level it was taken. When such decisions are taken at the highest level, provided of course there has been consultation, all officers are part of these decisions irrespective of their own views on that decision and in a sense are part of that decision. It would under the circumstances not only serve no purpose but would be wrong to say that the decision was that of only the Chief Minister.

8.49 The decision itself was ill-advised. In the climate prevailing at the time and circumstances that had arisen over the previous month or so, it was an over-reaction. It is possible to accept that strong emotions had been aroused on both sides—amongst the public and amongst the officers. The Assam side could well look at the developing situation as another instance of the strong aggressiveness of the Nagaland side, something which they had endured and suffered over the years. On the other hand, Nagaland could have an equally strong emotional response, because of what they considered the Assam side's over-bearing and arrogant reactions to what they considered minor things like fencing etc., particularly, in an area which was disputed and in which, according to Nagaland, Assam had no superior or special position relative to theirs.

8.50 Even with all this however it is not possible to condone this decision which was taken not by comparatively junior officers but at the highest level. It is true that both sides had suggested to the Government of India, a quick meeting where a Central Observer might be present so that the situation could be gone into and sorted out. If there was any delay in all this, the appropriate thing for officers of both sides at the senior level like the Chief Secretary would have been to make more efforts than they did to meet and thrash out matters. The step taken by Assam unnecessarily aggravated the situation and considering that the Forest Check Gate was in fact a regular barrier to free movement on a road used by the Nagas and Naga public, not a thing that would be taken lightly by them.

8.51 It will therefore have to be held that it was not in order for the Assam authorities to have taken this step. This step did lead to escalating the already tense atmosphere. It may not have been a decisive factor leading to the armed conflict but it was certainly a very major factor. The step was entirely avoidable. It resulted unfortunately in certain reactions on the part of the Nagaland authorities which were equally avoidable.

CHAPTER IX

(1) SEQUENCE OF EVENTS LEADING TO THE CONFLICT.

(2) WHETHER THE CONFLICT AND RESULTING LOSSES COULD HAVE BEEN AVERTED

The Nagaland Decisions of 28th May, 1985

9.1 Meanwhile, even as the situation worsened and events were rapidly reaching a point of no return, suggestions were being made to the Government of India for a Commissioner level meeting of the two States to be attended by a representative of the Ministry of Home Affairs as a Central Observer. The meeting was eventually fixed for the 3rd of June 1985 to be held at Chumukedima. In the later part of May, therefore, the attitude of both Governments was to have the situation discussed at the 3rd June meeting and try and have matters sorted out there with the help of the Central Observer.

9.2 The establishment of a Check Gate backed by a Company of Armed police and the induction of further armed police into the Merapani area by Assam, however, changed all this. The Nagaland side was furious and took this as a great provocation and direct threat to their maintaining contact with their civil police Check Gate at Merapani and with the Nagaland Armed Police platoon stationed at the Velluguri Seed Farm. The 3 or 4 days following the 26th May on which the check gate was set up represented a phase during which the Nagaland authorities attempted to discuss this issue with the Assam side and simultaneously began to formulate their own responses and counter moves to what they saw as an act of war. The considerable alarm and indignation with which the Forest Check Gate was viewed by the district administration of Wokha can be seen in the messages that were sent by the Deputy Commissioner, Wokha to his counterpart in Assam, the Deputy Commissioner, Jorhat. These messages may be seen at Annexures 62, 67, 75, 85 and 91 of N-I.

9.3 In substance, these messages considered the establishment of the Check Gate as a deliberate and calculated attempt by the Assam authorities to effect a blockade cutting off the Nagaland Civil Check Post from the Nagaland Armed Police located at the foothills. In setting up this Check Gate, Assam had forcibly occupied land belonging to Nagaland cultivators and according to reports even distributed some of the land to the Assam public. The armed police manning the Check Gate was deliberately harassing and humiliating not only the Naga people who wanted to cross this barrier but also officials of Nagaland. Reference was made in this connection to the Commandant 4th Nagaland Armed Police not having been allowed by the Assam Police to go and see his men at the Nagaland Check Gate at Merapani. It was alleged that Central Reserve Police Force were

also involved in all this and had in fact actively participated in construction of this new Check Gate cum Border outpost. Deputy Commissioner, Wokha referred to these acts as something that were done only by nations at war and the Assam Government had apparently launched a major armed offensive against Nagaland.

9.4 In all these messages which went out in the course of between 2 and 3 days, Deputy Commissioner, Wokha had repeatedly suggested that the Deputy Commissioners might meet so that matters could be discussed. He first suggested the 27th of May and in fact went up not only to Merapani but even to Golaghat but could not meet either the Deputy Commissioner or Deputy Inspector General of Police (Eastern Range). He then suggested their meeting on the 29th or 30th May. He again seems to have gone up to Golaghat and even to Jorhat but the Deputy Commissioner, Jorhat was out of station. Another meeting was suggested either on the 30th or 31st May. However, no meeting could take place because of Deputy Commissioner, Jorhat not being available.

9.5 While the meeting suggested by Deputy Commissioner, Wokha did not take place, there were messages being sent by Deputy Commissioner, Jorhat in reply. These may be seen at Annexure 72, 86, 86 C and 92 of N-I. The line he was taking was that there was no offensive move by the Assam Government; there should be no cause for apprehension and there was no need to unnecessarily generate a fear psychosis amongst the public. He maintained that the Forest Check Gate had been in existence for a long time since 1979 and had been re-established more or less at the same point. The police personnel stationed there were only to provide security to the forest staff on duty. Also, the Assam forest reserves including Doyang Reserve Forest had been declared as 'disturbed area' under the Assam Disturbed Areas Act. Police personnel had been instructed to see that arms or other lethal weapons were not smuggled illegally into Assam through this Check Gate. He also explained in these messages why it had not been possible for him to meet the Deputy Commissioner, Wokha. He said that all these matters could be discussed at the forthcoming Commissioner level meeting at Dimapur on 3rd June.

9.6 The trend of exchanges between the two Deputy Commissioners was becoming more and more sharp and acrimonious by the day and the atmosphere can best be summed up by quoting Deputy Commis-

sioner, Jorhat's message at Annexure 86(C) and Deputy Commissioner, Wokha's messages at Annexure 91 :—

Annexure 86(C)

"Request kindly refrain yourself from exaggerating and fabricating stories out of your creative imagination solely with a view to tarnishing the image of our Admn. Your allegations that at 0900 hrs yesterday, Assam public came to Nagaland side of Merapani and burnt down two Naga houses besides firing from 12 bore gun and using arrows on the Naga public are not only false but also malicious and vexatious. Your allegation that Commandant 4th Nagaland Armed Police was not allowed by Assam Police to the new gate is also not a fact. Your allegations that CRPF also actively participated in construction of new Border Outpost and in manning the new check gate and launching offensive against Nagaland are also untrue and products of your Creative-imagination only. Your allegation that at about 1600 hrs on 28th May, 1985, the Assam Police opened fire from their LMG, Sten Gun and 2 Inch Mortar without causing any casualty to your men as stated by you is also baseless and product of your imagination. The fact is as follows.

On 28th May at about 0810 hrs when Liladhar Saikia with others of our village Sibangpara were ploughing their lands about 20/30 Naga armed with daos/lathis and guns came attacked and fired at them. Luckily, however, nobody was injured as they fled away to safety. In the meantime they saw from distance two houses belonging to Limbo Lotha and Master Lotha on fire. Those houses were reportedly within Nagaland. Regarding above incident Merapani Police Station Case No. 785 is under investigation.

On 28th May, 1985 again at 1620 hrs when our one Section of 3rd Assam Police Bn. was patrolling in the village Baragharia near Sibangpara, Nagaland Armed Police party consisting of at least 8 persons opened fire on our patrolling party firing about 8 or 9 rounds. As a result one Babul Gogoi son of Hema Gogoi aged about 18 years got bullet injuries while working in the Satal Ghar. Babul Gogoi has been sent for medical aid. When Nagaland Armed Police did not stop and fired 8 to 9 rounds our Assam Police Bn. Section returned the fire with 7 to 8 rounds in self-defence. As already mentioned in my earlier message to you, Assam Government has not launched any offensive on Nagaland as alleged by you in a most irresponsible manner. Your message regularly carry such exaggerated and fake matter leading me to believe that you are

constantly preparing grounds for your aggressive and offensive illegal actions against our people in our forest reserve. Please clarify this aspect. We propose to meet at Dimapur on 3rd June, 1985 as I will remain out of headquarters on duty till 1st June, 1985."

Annexure 91 of N-I

"Self along with Superintendent of Police, Wokha came down to Merapani to meet you. Since there was no information about your coming we decided to meet you at Jorhat. We arrived Jorhat at 1330 hrs but found you were out of station. You will recall that in view of the explosive situation at Merapani I had suggested joint meeting with you at any place and time convenient to you. Please refer my signal of even numbers dated 26th May, 1985, 27th May, 1985 and 28th May, 1985 asking you for meeting. May be you did not consider it necessary to meet me after you had taken this offensive move and upper hand since 26th May. Your so-called new forest check gate is within Naga village of Merapani, occupying Naga private land as already pointed out in my previous signal. Your forest check gate manned by Assam Police and CRPF near only. This morning myself and Superintendent of Police were not allowed to cross the forest check gate by Assam Battalion Sub-Inspector, N. Gogoi, SI, Ramsurup of Assam Task Police Force. We were detained for 30 minutes between 1000 hrs to 1030 hrs. When I asked who was in charge of the Check Gate, they said they did not know. They said, they were instructed not to allow anybody with arms to cross check gate including Nagaland Armed Police or CRPF. Since I took 2 CRPF jawans in my jeep as body guard they detained me for about half an hour. If your forest check gate continues to harass our Naga public, Nagaland Government officials and try to disarm Nagaland Armed Police on duty which are illegal and provocative, I am afraid some violence may break out any moment. Such illegal blockade of Inter-State high-way by your policemen for no justified grounds is strongly condemned. If any untoward incident takes place as a result of this, responsibility shall be exclusively yours."

9.7 The Nagaland Government's attitude to the problem, it has to be accepted was largely based on the information and views being fed to it by the district authorities of Wokha. In his message to the Commissioner, Nagaland of 26th May, the Deputy Commissioner reported the position as follows :—

Annexure 63 of N-I

"Report received from Sub-Divisional Officer, Bhandari that today at 0530 hrs, Assam had deployed two armed police posts at Merapani

village towards Nagaland side of our police check post about 250 yds. towards foothill from our check gate. They also erected a new check gate on the main road thereby completely cutting off our check gate with Nagaland Police and Nagaland Armed Police posted there. It is also reported that they don't allow any vehicle from Nagaland side to cross their check gate. This appears to be an attempt to capture our police check gate along with the police personnel by creating a blockade. The strength of Assam Police is about two Companies and came with about 17 vehicles.

There appears to be no alternative except to make counter move by deploying at least two additional Companies of Nagaland Armed Police from whatever source is available. A high level Government decision appears to be necessary on the line of action to be taken by our Government. This message be treated as SOS message for our jawans in the check gate."

9.8 In a further message on the same day to the Commissioner, Nagaland, he reported as follows :—

Annexure 66 of N-I

"Reference this office signal of even number dated 26th May regarding the siege of our Merapani Police Check Gate along with Nagaland Armed Police by Assam Police since 0530 hours this morning. Further information received that more forces are being deployed by Assam in other areas also. The approach road to Longayim village in the foothill constructed by Nagas under SRRP had been destroyed by tractors today. This was done by public with armed police protection.

It may also be mentioned that Assam Police are now camping within Nagaland portion of Merapani village about 250 yds away from our Nagaland Armed Police Company Headquarter. The public of Merapani (Nagaland) have already fled from the village, leaving only the menfolk. Immediate reinforcement of Nagaland Armed Police operational plan from our side appears necessary. Meanwhile a high level contact with Central Government and Assam Government appears urgently needed. Matter most urgent."

9.9 On the 27th of May he sent the following message to the Commissioner, Nagaland :—

Annexure 100 of N-VI

".....Self along with Superintendent of Police, Wokha visited Merapani area today. After studying the situation it was considered necessary to meet Deputy Commissioner, Jorhat and Deputy Inspector General of Police, Assam. We proceeded to Jorhat but

could not meet them as they were out of location. We met Sub Divisional Officer, Golaghat to discuss the situation but nothing could be decided by Sub-Divisional Officer, Golaghat. As already reported yesterday the Assam Police had opened a new post of 1 Company at Nagaland side of Merapani with effect from 0530 hrs on 26th May. A check gate was immediately put upon the main N.E.C. Road blocking all traffic going towards Assam thereby cutting off our police check gate with Nagaland Armed Police personnel there. Construction of Assam police accommodation with defensive earth wall and bunkers progressing at full swing by employing about 200 public from Assam. Location of this new check gate is towards Nagaland side and about 250 metres from our Nagaland Armed Police 'E' Company Headquarters.

Public from Assam side are constantly threatening our Nagaland Armed Police at the check gate with slogans shouting like all Nagaland Armed Police shall be hanged from the iron fencing posts of the check gate. Public and Nagaland Armed Police from Nagaland are not allowed to purchase any articles from Merapani market. Another check gate also erected near Merapani bazar bridge thereby putting our Inner Line Permit Check Gate in between these two Assam Check Gates. Already reported the approach road to Longayim village constructed last year by Nagaland S.R.R.P. (jeepable) had been completely spoiled yesterday. The land between the Merapani Police Station and the new Assam Police post measuring about 600 metres, being fenced by public of Assam. It is reported that all these lands belonging to Nagas are being distributed among the Assam public. The Nagas at Merapani and our Nagaland Armed Police are in panic and fears at this excessive show of force by Assam. Some of the women and children of Merapani had fled from the village.

Seeing the scale of operation and the planned movement of force it appears Assam is undertaking this operation almost on war footing. Two battalions of Assam Police, viz., 1st Assam Armed Police and 3rd Assam Armed Police are being deployed in the area. The Nagaland Armed Police available at the check gate and at 'E' Company Headquarters are not adequate to meet the situation. The Assam operation was personally supervised on the spot by Deputy Inspector General of Police (Border) and Deputy Commissioner, Jorhat along with many others high officials. From Nagaland side neither Deputy Inspector General (Border) nor Superintendent of Police (Border) have visited the area after this new development. Only Deputy Commandant 4th Nagaland Armed Police

arrived this morning without force. 2nd Nagaland Armed Police personnel are reported to be on the way.

Government may immediately take policy decision whether to counter with arms the Assam Government offensive or to withdraw unilaterally our Nagaland Armed Police from the check gate. The latter will mean abandoning of our civil police check gate and Veterinary Colony as they would not be able to stay without armed protection in the present atmosphere. It may be recalled that simultaneous withdrawal of both armed forces from check gate area as proposed earlier by Nagaland Government could not be implemented due to non-response from Assam side."

9.10 In another message to the Commissioner, Nagaland of 30th May, he reported as follows :—

Annexure 103 of N-VI

"Self along with Superintendent of Police visited Merapani area today. Deputy Inspector General, Nagaland Armed Police camping at Merapani to take command of Nagaland Armed Police. Deputy Inspector General of Police (Border), Nagaland and Deputy Inspector General (Border), Assam had joint meeting at Assam Police Station, Merapani and decided that both Assam Police and Nagaland Armed Police should remove within their camps till 3rd June, 1985. The public of Bhandari and Merapani were unhappy with Deputy Inspector General of Police (Border), Nagaland and gheraoed him for quite some time. Minister of State, T. N. Ngullic happen to visit the area and due to his intervention was safely released."

Deputy Commissioner, Wokha had invited Deputy Commissioner, Jorhat for joint meeting any place and time convenient to Deputy Commissioner, Jorhat, suggesting various dates since 27th May, 1985 upto 30th May, 1985. Since Deputy Commissioner, Jorhat did not respond, Deputy Commissioner, Wokha went to Jorhat to meet Deputy Commissioner, Jorhat or Commissioner, Upper Assam Division. But both were out of station.

The new check gate established by Assam since 26th May, 1985 in the name of forest check gate had been used to insult Nagaland Government. They prohibit any armed police to cross this gate with the object of isolating the Nagaland Armed Police at the check gate. Deputy Commissioner, Wokha and Superintendent of Police, Wokha were stopped at the check gate today more than 30 minutes between 11.00 AM to 11.30. This is a great insult to Nagaland, confrontation between Nagaland Armed Police and Assam Police continues near the Assam

check gate with more reinforcement of Nagaland Armed Police arriving. Our Nagaland Armed Police strength is around 400 to 500 men now. Assam is deploying about two battalions of Assam Armed Police. No firing incident take place but the blockade by Assam check gate continues which is the biggest insult and irritant to Nagaland Armed Police. Every effort being made to reduce tension and avoid armed conflict.

Large public from all parts of Wokha gathering at Bhandari. Lotha Students Union organised public meeting at Wokha today to discuss the border situation."

9.11 In his message of 31st May, his report was :—

Annexure 104 of N-VI

"The blockade effected by Assam Police on our Inner Line Permit Check Gate and Veterinary Colony at Merapani still continues. The blockade is done by opening Border Outpost and check gate about half kilometre towards Nagaland side of our Inner Line Permit check gate on N.E.C. Road within Nagaland Merapani village premises. Even before our scheduled joint meeting on 3rd June, we should insist on the lifting of this blockade which has no ground or justification. Here the issue at stake is the honour and prestige of your State. I suggest that an ultimatum be given to Assam Government with information to Government of India to lift the blockade of our check gate within 24 hrs. failing which we shall have the option to remove the blockade by force. As per Government directive, Deputy Inspector General of Police (Border), Nagaland, met his counterpart at Jorhat and signed an agreement confirming the blockade. He did not insist on removal/lifting of the blockade. This has tightened the hands of the Nagaland Armed Police and angered the general public who are gathering in large numbers at Merapani area with arms. Unless Assam Police lifted their blockade."

9.12 His message of 1st June was as follows :—

Annexure 107 of N-VI

"Report received from Sub-Divisional Officer (Civil), Bhandari that Assam Police Battalion opened fire towards Nagaland in Mekirang and Nagapath area about midnight last night by using 2 Inch Mortar, LMG and .303 Rifles. Detailed report is awaited.

He also reported that Government Seed Farm irrigation canal had been completely blocked by Assam public by constructing dam in the canal. The Government officials and Nagaland Armed Police posted in the Seed Farm are not allowed to come out of

their compound. No reinforcement of Nagaland Armed Police also allowed. The Assam Police deployed in large number through out the border area are systematically harassing and threatening the Naga public. This road blockade at Merapani by Assam Police still continues. It is high time we remove the blockade by use of force or we strongly appeal the Central Government to immediately intervene in the matter by sending their representative to the spot itself. Discussion on the negotiating table may not yield any good result as the Assam side has no respect for truth and can manufacture any amount of fabricated stories to justify themselves."

9.13 These messages indicate the somewhat aggressive line taken and suggested to his Government by the Deputy Commissioner, Wokha. In his message of 27th May, he wanted the Government to take a policy decision whether the Assam Government offensive as reported should be countered with arms or Nagaland Armed Police should be unilaterally withdrawn from the Nagaland Check Gate. He felt that such unilateral withdrawal would mean abandoning the civil police check gate as it could not stay without armed protection in the atmosphere that existed at the time. His message of 30th May referred to the blockade posed by the check gate as the biggest insult and irritant to the Nagaland Armed Police and an insult to the Nagaland Government. In his message of 31st May, referring to the forthcoming meeting at Commissioner level of 3rd June, he said that Nagaland should insist on lifting of this blockade even before that meeting as there was no ground or justification for it. He felt that what was at stake was the honour and prestige of Nagaland. He suggested that an ultimatum be given to the Assam Government with intimation to the Government of India that the blockade of the check gate should be lifted within 24 hours failing which Nagaland would have the option to remove this blockade by force. In his message of 1st June also he said that it was a high time that the blockade was removed by use of force on that a strong appeal was made to the Central Government to immediately intervene in the matter by sending their representative to the spot.

9.14 Meanwhile, messages continued to be exchanged between the two Governments each accusing the other of all kinds of incidents including firing by this side or the other, villagers being attacked and so on. It is in this atmosphere that a meeting was taken on 28th May by the Chief Secretary, Nagaland to consider the situation. According to Nagaland, the decision taken at this meeting was to send the Deputy Inspector General of Police, Nagaland (Armed Police and Fire Service) along with force to the Merapani area as a counter move to what the Assam authorities had done. He was to assess the situation try and defuse it and take whatever measures were appropriate in the circumstances.

9.15 On the other hand, the contention of Assam seem to be that Nagaland was not prepared to tolerate

the Forest Check Gate under any circumstances and the meeting decided that it should be removed by force and for the purpose Nagaland Armed Police should attack Assam if that became necessary. This contention is supported by the further argument that this is in fact what eventually happened. Nagaland Armed Police overran the Merapani area and destroyed not only the Forest Check Gate but also the other irritant the Merapani Police Station.

9.16 Unfortunately, no minutes of the meeting appears to have been kept and it will therefore be necessary to go by what is stated in the Nagaland affidavits or the oral evidence that has come before the Commission, to see what exactly was Nagaland's response to the Forest Check Gate at this meeting and what was the decision taken.

9.17 The state affidavit makes no mention of the meeting nor is there any mention of this meeting by Shri Jakhalu in his affidavit although he was one of the officers who attended this meeting. Shri Sithlou, Deputy Inspector General of Police, Nagaland Armed Police, who also attended the meeting has this to say in his affidavit:—

"That on 28th May 1985 a number of frantic signals were received from Commandant 4th Nagaland Armed Police who was at Merapani about the unprovoked firing resorted to by the Assam Police in Merapani. . . . In the light of the above reference a meeting was held at the residence of the Chief Secretary, Nagaland on the evening of 28th May, 1985. After discussing at length it was decided that Deputy Inspector General of Police, Nagaland Armed Police should rush to Merapani with reinforcement. Accordingly, an order was issued by the Chief Secretary, Nagaland vide BA(CS) 1/85 dated 28th May, 1985. A copy of which is enclosed herewith as Annexure 'B'"

9.18 Shri K. L. Watts, Inspector General of Police, Nagaland and Shri Nungshiliba Ao, Deputy Inspector General of Police (Headquarters), Nagaland were the other officers who attended this meeting. The former had filed no affidavit and the latter made no direct reference to the meeting.

Oral evidence is as follows:—

Shri K. L. Watts

"I attended the meeting on 28th evening presided over by I. Longkumer, Chief Secretary, Nagaland, and attended by, besides me, the Commissioner, Nagaland Shri Jakhalu, DIG (Hqs.), Shri Aliba and DIG, NAP Shri Sithlou. The Meeting was held at the residence of the Chief Secretary. The purpose was to consider various pieces of information/reports received regarding Merapani and SOS Call for reinforcement. The deci-

sion taken in the meeting was to send reinforcement under command of Shri Sithhou. I may mention that it was a fairly prolonged meeting.... The decision taken in the meeting of 28th May was complied with. A wireless message was sent by Chief Secretary, Nagaland to Deputy Commissioner, Wokha about the decision taken regarding reinforcement being sent and DIG, Nagaland Armed Police being sent. Shri Sithhou was the only DIG sent to Merapani as a result of decision taken in the above referred to meeting of 28th May. I would like to add here that I had been desisting sending reinforcement till 28th May for various reasons.... On the 28th itself, my stand was that we should send a senior officer on the spot who should have a fresh look and intimate his assessment where upon further action should be taken. However, I am not excluding myself in the decision making process on the 28th May.

.....No minutes were recorded of that meeting as far as I remember. It was a free and frank discussion amongst the officers. I was not asked by the Chief Secretary to visit Merapani personally. I did mention that one senior police officer should be sent but I did not say that the Commissioner and I should go. I do not think the visit of two of us could have contributed to the defusion of the situation. I did not personally apprise the Chief Minister of this meeting. But as mentioned earlier I briefed the Governor of Nagaland next morning. It is wrong that in that meeting (of 28th May) we decided to attack Assam to teach them a lesson.....

The obstruction mentioned in Commandant 4th NAP's wireless addressed to IGP referred to the forest check gate. The information available on the 28th May when the meeting was held at Kohima included various wireless messages received from officers including Deputy Commissioner, Wokha. In short, it was said that Assam was sending reinforcements to Merapani in a very big way. Assam had also started firing 2 Inch Mortars, LMG's, Rifles, etc. and we stood absolutely outnumbered. Therefore reinforcements should be sent. What the Commissioner suggested at the meeting was let us both go with reinforcement to Merapani. Both included him and me. He was in a very agitated state of mind. Decision taken was that we shall send a senior police officer and the reinforcement. This was a consensus. At that stage he was not for defusion of situation. But we insisted that senior police officer will go and assess the situation and ensure no untoward incident takes place.... "

Shri Sithhou :—

"I went to Merapani on 29th May on the specific order of the Chief Secretary. At the meeting on 28th May at the residence of Chief Secretary, the officers present were, IGP, Commissioner, Nagaland, DIG (Hqrs.) and myself. DC, Wokha was not present. I did not meet Deputy Commissioner, Wokha at any time on the 28th May at Kohima. The meeting was for the specific order of discussing the Merapani situation as brought about by the frantic signal of Commandant 4th NAP over the previous day or two. This signal had said that the Assam Police were harassing the public and they had cut off all communications between Inner Line Permit Check Gate and the Seed Farm. These signals were addressed to IGP, Nagaland but were repeated to me for information.....

.....Prior to the meeting of 28th May I had submitted a note to IGP about the deteriorating situation in Merapani and the need for the two Border DIGs of the States to meet to defuse the situation (Exhibit Commission IX). I did not suggest at the 28th May meeting that the two Border DIG's should meet. IGP also did not suggest the Border DIG's meeting at the 28th May meeting.There was a suggestion on 28th May meeting that the IGP should himself visit the area. This suggestion was made by the Commissioner. The suggestion was not accepted and it was decided that I should go. I do not remember who first suggested that more force should be sent along with DIG, NAP. I did not suggest sending of more force. Commandant 4th, NAP was requesting for more force and therefore it was decided at the meeting that reinforcement should be made.

.....The meeting was over by about 10.00 P.M. The meeting lasted around 10 or 15 minutes. All these matters of my going, how much force to be taken were decided at this meeting. I took 2 Coys and 2 platoons with me. The total number of men would be around 350. I was asked to proceed immediately but I left on 29th morning.I left Kohima at about 10 in the morning and arrived at Merapani at about 3.00 P.M....."

Shri Nungshilba Ao :—

"I was at Kohima on 28th May. I attended one meeting on that date convened by Chief Secretary. IGP was present and I was the only DIG. Commissioner, Nagaland was also present. It was an emergency meeting. I am not sure whether the minutes of the meeting were recorded. The main subject discussed was re-enforcing NAP at Merapani. We evaluated the reports sent by

Deputy Commissioner, Wokha while discussing the matter. Deputy Commissioner, Wokha was not present. I did not meet Deputy Commissioner, Wokha in Kohima at any point of time on the 28th May. IGP had suggested at the meeting that instead of taking action on the basis of Deputy Commissioner, Wokha's report, it would be better if a senior officer were sent to Merapani to assess the situation. The suggestion was not accepted and finally it was decided to send the minimum possible reinforcement. It was decided to send 3 Coys to Merapani as reinforcement. As Staff Officer to IGP it was my duty to issue instructions for implementation of this decision. I issued these instructions to Commandants 4th Nagaland Armed Police and 1st Nagaland Armed Police to send available forces to Merapani. IGP's suggestion which I have referred to was duly considered. The general consensus was not in favour of accepting the suggestion. The meeting had noted that there had been firing by Assam Police on 28th May.

We have an Intelligence Branch in the police. We do not have any intelligence source in Merapani. There was thus no scope to consider material that might have come from intelligence. The material considered was the report of Deputy Commissioner, Wokha, Coy Commander, Border Magistrate and Supdt. of Police (Border), Nagaland."

Shri I. Longkumer:—

"I am aware that a Forest Check Gate was set up on the Golaghat-Wokha road by Assam. The Assam side called it the Forest Check Gate. I do not see any reason why it should have been set up. The Nagaland Armed Police contingent was still at Inner Line Permit on 26th May. The strength was the same as it was at the beginning of 22nd April. We wanted to discuss this Forest Check Gate matter at a high level meeting in view of the critical situation created as a result of the construction of a Forest Check Post. The communication to Nagaland Armed Police post located at Inner Line Permit Check Gate and Velluguri post was cut off. I received reports that Nagaland police personnel and civil administration officers of Nagaland were not allowed to move along the road as a result of this. These reports were from the district administration. I must have received reports from the Commissioner also on this point. Inspector General of Police, Nagaland also said the same thing. I do not remember whether the Commissioner, Nagaland met me on the 27th May. I do not remember whether I had any discussion with any Minister or Chief Minister between the

26th and 28th May. The 28th May meeting was called by me on my own. There was no agenda. The purpose was to discuss and review the situation prevailing at Merapani at that time. The meeting was attended by Commissioner, Nagaland, IGP, DIG (HQRs), DIG, NAP. No-body else was present. The meeting was called late in the afternoon. It was not at night. There were various reports that were discussed. I do not remember whether there was any report from DC, Wokha. One of the issues discussed was the erection of Forest Check Post by Assam and also the induction of Assam Police and construction of barracks by them and also pickets etc. We thought we were facing a very critical situation and therefore we decided to send a senior officer to Merapani and also to send additional force. It is correct, that IGP Nagaland had suggested that instead of relying on DC, Wokha report, it would be better to send a senior officer to assess the situation. The decision however was to send DIG Nagaland Armed Police with force. It was considered that DIG (NAP) would be able to assess the situation. This was a decision taken at the meeting and not a pre-determined decision handed down to the meeting.

The meeting was held at my residence. I normally function from my office. Our office was over at 3-30 and therefore I was in my residence in the late afternoon. The need for an emergent meeting at my residence was determined by me, after discussion with Commissioner and IGP, Nagaland. It was the consensus of all the senior officers at the meeting that the obstruction provided by this Forest Check Gate must be removed, not by force of course. We had to send a senior officer with force because it was apprehended that Assam would attack the Nagaland post. Our apprehension was based on the fact that this obstruction had been erected, a diversion road had been constructed to by-pass the ILP, bunkers had been constructed and LMG pickets had been established. However, there were no intelligence reports as such. No minutes of the 28th May meeting were kept. Normally, we have minutes but in this case since IGP, Commissioner were there, we thought that minutes were not necessary. I must have taken up this matter of sending Senior officer with force with Chief Minister and got his approval.

Regarding not keeping of minutes of the 28th May meeting, we thought that since we discussed the issues thoroughly and whatever instructions were to be given to the Commissioner and IGP was given, it was not necessary to keep the record of the minutes. Many a time we hold meetings,

some time we keep minutes, some time we do not.....

At the 28th May meeting, instead of sending force to Merapani, we could have considered making another attempt to sort things out with Assam through meetings and discussions, but there was no point as Assam had gone too far and we could see no scope for any discussion. In fact, according to our information, Assam was about to attack. We did have an intelligence unit at the time in Wokha district. Deputy Commissioner, Wokha, Supdt. of Police, Wokha, Commissioner and IGP were the only source of our information about the build up and the impending attack by Assam.....

We did not try to verify from any other sources.... It is incorrect that Chief Minister had directed us at the 28th May meeting that we should attack Assam and it is for this reason that force was sent to Merapani with the senior officers."

9.19 In the absence of minutes of this meeting, there is no documentary evidence. The only document that seems to have some relevance and would be useful in summing up the attitude of the Nagaland Government at that point is a note dated 29th May recorded by the Chief Secretary, Nagaland in file No. CCB 3/82(Vol. II). The note refers to a meeting held in his office chamber but it is not clear when this meeting was held, whether on the 28th May or 29th May. The fact that this is a different meeting and not the one referred to by the different witnesses as above is also clear considering that those attending were Commissioner, Nagaland, Home Commissioner and Inspector General of Police—and not Deputy Inspector General of Police, Nagaland Armed Police and Deputy Inspector General of Police (Headquarters). The note reads as follows :—

"A meeting was held in the office chamber of the Chief Secretary, Nagaland, to discuss about the latest border situation at Merapani. The Commissioner, Nagaland, Home Commissioner and Inspector General of Police attended the meeting. On the copy of the situation report submitted by the Deputy Commissioner, Wokha, the Chief Minister minuted that we should also send the police force to Merapani in view of the induction of two Coys of Assam Police in that area. The induction of police force is intended not to confront the Assam Police but to take similar action as they have done.

The Inspector General of Police had pointed out that the police force deployed in the Merapani area had been further strengthened during the last two days raising the strength to more than a coy. He also expressed his difficulty in arranging the

additional two Coys of NAP for the purpose. He explained that the extra force has been moved today to Rangapahar in view of the developing situation there. Also, there has been firing by an unidentified person at a Police Constable yesterday between Medziphema and Zarnapari as a result more force has to be sent to Rangapahar. However, he felt that he will be able to deploy one Coy of NAP by pulling out the force from elsewhere. The Commissioner, Nagaland suggested that the existing one Coy. force at Merapani may be withdrawn and stationed at Bhandari and in lieu of this force, the two Coys of NAP may be inducted. This suggestion was made by him in view of the fact that this force had been staying there for quite sometime. He also pointed out that the Deputy Commandant should be sent along with the two Coys of NAP and any action to be taken by the NAP deployed there should have the approval of the IGP. It was found in the past days that confusion was created because of instructions being issued from various sources. These arrangements are being made on temporary basis pending discussion to be held between the two Commissioners of Assam and Nagaland on 3rd June 1985 at Chumukedima. Further follow up action will be taken on the basis of the agreement which is to be arrived at between the two Commissioners."

In the light of the narration above, the issue that arise for consideration are :—

- (i) Perceptions of the Wokha Admn. about the Forest Check Gate and Assam Police reinforcement in the Merapani area and their reaction.
- (ii) The Nagaland response to the step taken by Assam as decided at the Govt. level in the meeting of 28th May 1985.
- (iii) Did this response include as has been contended by Assam a decision that the Assam check gate was unacceptable and should be removed by force, and for the purpose if necessary the task should be performed by Nagaland Armed Police ?
- (iv) Was the decision of the Nagaland Govt. at this point in order ?

9.20 The conclusion that emerges at this point is that the district administration quite clearly was extremely agitated and alarmed at the induction of as many as 3 Companies of Assam Police as reinforcement and on top of that the setting up of what was really a barrier to block and control free movement of people from the Nagaland side on the Golaghat-Wokha road. The problem was further compounded

by the strong and emotional reactions of the Deputy Commissioner, Wokha who was inclined to be somewhat impetuous and hasty. The manner in which he reported developments immediately following the 26th May to his Government was certainly not calculated to present the picture in a rational and sober manner. It has already been held that the step taken by Assam on the 26th May was not well conceived and was in fact ill-advised. The strong emotional reaction on the part of the Naga people is understandable. However, as far as the administration of Nagaland is concerned, one would expect that in reporting facts, a sense of balance and objectivity would be maintained. For example, injecting such phrases as "this is a great insult to Nagaland....." or "is the biggest insult and irritant to Nagaland Armed Police" or "I suggest that an ultimatum be given to Assam Government with information to Government of India to lift the blockade of our check gate within 24 hours failing which we should have the option to remove the blockade by force" did not in any manner add to or strengthen the facts as they were. On the contrary, this kind of reporting tended to arouse emotions unnecessarily and give a coloured picture to Government at the highest level. The language used by him in his exchanges with Deputy Commissioner, Jorhat was also unfortunate and should have been avoided. The fact that the Deputy Commissioner, Jorhat was equally at fault was of no help either to his own Government or the public at large.

9.21 At the same time, it has to be acknowledged that the Deputy Commissioner, Wokha spared no pains in trying to meet Deputy Commissioner, Jorhat so that the situation that had arisen could be discussed. At the official level, there can be no excuse given by the Assam side that in view of the attitudes that prevailed on the other side, particularly with the district administration of Wokha, there was no point in further discussion. Whatever the perception or provocation as seen by a particular side, there is always a point in discussion and further discussion and it is expected that officers will show due sense of responsibility and maturity in these matters. It is unfortunate that the reactions of the Assam Administration to this attempt of Deputy Commissioner, Wokha were negative. This is clear not only from the relevant messages referred to already but also from the oral evidence of Deputy Commissioner, Jorhat that has come on record. It is apparent that Assam were at this point in no mood to discuss the step that they had taken. Their approach was to leave things to the meeting of the 3rd June—which position apparently in view of his continued barrage of messages to his Government including going to Kohima etc., Deputy Commissioner, Wokha was not prepared to accept.

9.22 The district administration of Wokha therefore perceived the Forest Check Gate and the heavy induction of Assam Armed Police as a grave threat, a provocation and an insult to Nagaland and went to the extent of recommending to their Government, the removal of this obstruction in the shape of the check gate, if it came to that, by force. In other words, the

district administration quite clearly and consciously recommended an ultimatum and use of force.

9.23 Nevertheless, on the basis of evidence that has come before the Commission, the Assam contention that the 28th May meeting then decided that the Forest Check Gate of Assam should be removed by force or that Assam should be attacked will have to be rejected. The relevant evidence has been quoted above. All that this shows is that the Merapani situation was considered, that discussions were based on information/reports/SOS for reinforcement available to the meeting, these reports included those from Deputy Commissioner, Wokha, Commandant 4th Nagaland Armed Police, Border Magistrate etc. that there were some suggestions made that instead of going by Deputy Commissioner, Wokha's reports, a senior officer should be sent to assess the situation; these suggestions were rejected; in fact, there was even a suggestion by the Commissioner that either both he and Inspector General of Police or Inspector General of Police alone should go. This was rejected; the consensus was to send Deputy Inspector General of Police, Nagaland Armed Police Shri Sithluu along with force. He was also to assess the situation and see that no untoward incident happened.

9.24 There are some minor contradictions here and there in the evidence coming from different officers but in substance what has been given above is the position that emerges. There is no other evidence available to contradict this. In fact, the note of 29th May recorded by the Chief Secretary and some contemporaneous messages issued tend to confirm the conclusion that the decision was broadly, that there must be a suitable response to what Assam had done. This should be to send a senior officer along with force to Merapani. The force would be a counter move to the force inducted by Assam. Simultaneously, a senior police officer could also assess the situation and try and see that nothing untoward happened.

9.25 The note of Chief Secretary confirms at the same time the impressions and conclusions referred to earlier about the behaviour of certain officers located at Merapani or in the district of Wokha. The Commissioner, Nagaland, for example, suggested at this meeting that the existing 1 Company force at Merapani should be withdrawn and in lieu of this force two Companies of Nagaland Armed Police should be inducted. The reason he gave was that this existing Company had been there for quite some time. He also wanted that the Deputy Commandant should be sent along with two Companies and any action to be taken by Nagaland Armed Police deployed should have the approval of Inspector General of Police. This suggestion of Commissioner, Nagaland is obviously because of the general behaviour of the 'E' Company Commander with reference to all that had been happening there, and particularly with reference to implementation of the 1st May agreement. It has been noted earlier that he was actively obstructing the implementation of the agreement and was sending direct messages not only to senior officers and particularly Deputy Commissioner, Wokha when he had

no business to do so but also, it seems to the Speaker, etc. It is apparently for this reason that the Commissioner suggested at the meeting that a new Deputy Commandant should go with the two Companies to replace the existing Commander. The anxiety of the Commissioner, Nagaland to defuse the situation and to remove people who were creating problems is quite evident from this.

9.26 There is further confirmation of the Commissioner's attitude and therefore his Government's in the messages sent at this time to the Commissioner, Upper Assam Division and to the Deputy Inspector General of Police (Border), Nagaland. On the very day of this meeting namely the 28th May, Commissioner, Nagaland, sent a message to Commissioner, Upper Assam Division, as follows :—

Annexure 128 in N-VI

"Report received that Assam authorities had inducted more police forces of several Coys strength in the last few days in Merapani disputed area and opened another new post towards, Nagaland at check gate. These forces are threatening to encircle and wipe out the Nagaland police camp. We believe that confrontation and forcible evacuation of one police force by another neither desirable nor lawful and that the border dispute should be settled by peaceful and mutual agreed process. We also believe that in response to Assam authorities provocative move should the Nagaland authorities also induct more police forces in the area unpleasant incidents are bound to flow.

Under the circumstances we request that both State forces should withdraw to the status of pre-20th April, 1985 and that the simultaneous withdrawal should be done under supervision of Deputy Inspector General of Police of both States which should be effected before we could meet on 3rd June at Dimapur.

If Assam authorities consider that the said withdrawal be not acceptable to them we would be compelled to induct our State forces to safeguard our interest. For Deputy Inspector General of Police (Border) only : Contact your counterpart immediately and arrange withdrawal as above and intimate result."

His message dated 29th May to DIG(B). Nagaland is as follows :—(Page 87 of Nagaland File No. CCB 3/82 Vol. II).

"Refer our W/T message even number dated 28-5-85 addressed to Commissioner, Upper Assam Division, Jorhat regarding arrangement of withdrawal of police forces from Merapani and also your W/T message of even number dated 28th May on the same. Govt. have already posted one DIG, NAP at Merapani effective from last night

to take charge of the situation with the specific instruction that no local authority will interfere in matters related to movement of NAP in the area and withdrawal of forces if this can be arranged. Since the situation is becoming beyond control you should immediately proceed to meet your counterpart in Assam and arrange simultaneous withdrawal of both forces restoring to position of pre-20th April as arranged earlier. Unfiling matters like fencing or temporary roofing being done by either State forces recently may be left undisturbed at present and these should not cause any obstruction to the withdrawal arrangement. If arrangement for withdrawal could be made DIGs (Border) of both States must personally supervise withdrawal and you should contact DIG posted at Merapani."

9.27 These moves on the part of Nagaland authorities to defuse the situation are further confirmed by the evidence of Shri Sithlou. He says on his arrival at Merapani with force on the 29th May as a result of the decision of 28th May meeting, he immediately sent a signal to Deputy Inspector General of Police (Border), Nagaland to meet his counterpart to defuse the tense situation that had developed. He himself met officers of the Assam Police who were posted at the Merapani Police Station and explained to them the need to keep peace and harmony and refrain from any provocative act. He also met Deputy Inspector General of Police (Eastern Range) of Assam on the 30th May.

9.28 Simultaneously, Deputy Inspector General of Police (Border), Nagaland also, probably as a result of the message of Commissioner, Nagaland of 29th May met Deputy Inspector General of Police (Eastern Range) of Assam on the 30th May and while the latter said that it was not possible to revert to the pre-20th April position in view of developments that had taken place, the two were able to conclude a reasonably satisfactory agreement to confine the personnel of the two forces to barracks. All this does not suggest that there was anything like a decision on the 28th May to the effect that Assam should be attacked. In fact, one of the major conclusions that emerges is that Shri Jakhalu, the Commissioner for one showed exemplary restraint, sobriety and level headedness throughout. The fact that his attempts were frustrated by parallel activities that were going on at the same time on the part of other officers is one of the most unfortunate features in this case.

9.29 It needs to be mentioned here that the Commission asked the Nagaland Government to furnish to it the reports/messages etc. from Deputy Commissioner, Wokha, Commandant 4th Nagaland Armed Police, Border Magistrate etc. that were considered at the 28th May meeting. As has come out in evidence, discussions were based on these reports and the line of action decided upon would certainly be influenced by what had been suggested in these reports/messages. In spite of a number of reminders, however, none of these documents was submitted by the State Govern-

ment nor was there any explanation as to why this was not being done. The Commission can in the circumstances only conclude that these reports, particularly those from Deputy Commissioner, Wokha did suggest armed intervention to remove the obstruction posed by the Assam check gate by force. However, while this may have been the recommendation before the meeting, the decision taken was as discussed in detail above.

9.30 As to whether the decision of the Nagaland Government to take appropriate counter measures and send a senior officer was in order, the point could certainly be made that instead of doing this, it would have been better to have the matter discussed at senior officers level. The two Chief Secretaries could have met, and if it came to that, even the Chief Ministers.

It has been argued on behalf of Nagaland that the Assam Government would have surely known the strong emotional response of the Nagaland side to the establishment of their check gate along with armed police and that the Nagaland Government would not take this lying down. In the same manner, the Nagaland side should also have been known that the injection of the Nagaland Armed Police as a counter to the Assam Police would be of no help and would only strengthen the possibilities of a confrontation.

9.31 Therefore, while it can be accepted that in the circumstances prevailing at the time, the temptation for the course of action adopted by Nagaland would certainly be very strong and is to a degree understandable the decision itself was another event contributing to the eventual conflict.



CHAPTER X

1. SEQUENCE OF EVENTS LEADING TO THE CONFLICT.
2. WHETHER THE CONFLICT AND RESULTING LOSSES COULD HAVE BEEN AVERTED.

Failure of the Chumukedima Meeting of 3rd and 4th June

10.1 With the completion of fencing of the Merapani Inner Line Permit Check Gate by the Nagaland authorities towards the middle of May, 1985 despite protests from the Assam Government, the deployment of armed police forces as a result of the decisions taken at a meeting held by the Chief Secretary, Assam on 21st May, 1985 and a further countermove by the Assam Government by way of setting up of what was described as a Forest Check Gate beyond the Inner Line Permit Check Gate towards the foothills by the 26th of May and then the augmentation of the Nagaland Armed Police as a result of the decision taken at a meeting held on 28th May by the Nagaland Chief Secretary, the situation became extremely explosive. The armed police forces of the two States were now facing each other in sizeable strength and in a state of imminent confrontation. Both the State Governments tried to justify their actions in informing the Central Government through various messages blaming one another. The communication channel between senior officers of both States had, by this time, broken down.

10.2 The Assam Government through a wireless message of 30th April, 1985 (Page 73 of A-VI) suggested to the Nagaland Government the holding of a Commissioner level meeting in the presence of a Central Observer to defuse the situation. The Ministry of Home Affairs was simultaneously requested to fix an early date for this meeting where a senior representative of the Ministry could also be present. The Ministry vide its wireless message dated 8th May, 1985 (page 83 of A-VI) informed the Chief Secretaries of Assam and Nagaland to hold the meeting after 13th May. It was also suggested by the Home Ministry that the Commissioners may meet in case the matter was urgent and pressing. A mutually convenient date and venue was asked for to be fixed by both the States under information to the Home Ministry.

10.3 The Nagaland Government (page 93 of A-VI) suggested to the Assam Government the fixing of a meeting on 24th May at Chumukedima (Dimapur) and asked for confirmation of the date and venue. The Nagaland Government also requested the Home Ministry to depute their representative to the meeting. The Assam Government, however, suggested the 27th May as their district officers would be busy with the Governor's visit to the Sibsagar & Jorhat districts from the 23rd to 26th May—Annexure 12 of N-II. This was accepted by the Nagaland Government—

Annexure 13 of N-II—. The Ministry of Home Affairs, in their wireless message dated 21st May, 1985—Annexure 14 of N-II—informed both the Chief Secretaries that the meeting may be postponed to the 3rd June at Dimapur due to pre-occupations of the Home Ministry with pressing work. This date was accepted by both the State Governments. The Home Ministry deputed Shri S. R. Arya, Joint Secretary, to attend the meeting as a Central Observer.

Meeting on 3rd June

10.4 The Commissioners level meeting, as scheduled, took place on 3rd June at Chumukedima. The Central Observer Shri S. R. Arya missed his plane from Guwahati to Dimapur and was thus not able to participate in the meeting on the 3rd June. The meeting was attended by the Commissioners of the two States (Shri M. S. Pangte, Commissioner North Assam Division and Shri N. Jakhalu, Commissioner, Nagaland), the Inspectors General of Police (Shri K. L. Watts and Shri B. D. Kharkwal), the Deputy Inspectors General (Shri P. V. Sumant, Shri Shurhiu and Shri Sitlhou), the Deputy Commissioners (Shri Lal-thara and Shri C. Barua), and the Superintendents of Police (Shri A. K. Mallik and Shri Z. Latha) besides others.

10.5 The two State Governments in their affidavits filed before the Commission have given different versions of the proceedings of the meeting held on 3rd June, 1985.

10.6 The Assam Government in their counter-affidavit—A-II para 62—have stated as follows :—

“.....The Commissioners level meeting started at 2 PM on 3rd June, 1985, at Chumukedima even in the absence of representative of Government of India. Discussion on Merapani took place at 4 PM which continued till 7.30 PM. In the absence of Central representative, it was jointly agreed meanwhile to dispose of other important items on the agenda. Nagaland side did not show any interest in the eviction of encroachers from Runi Basti as also from the land earmarked for Amguri-Tuli railway line. Similarly, they were not willing to co-operate in the matter of demarcation of Abhoypur Reserve Forest. It may be noted that in February, 1985, Nagaland authorities and civilians had committed a number of illegalities in Abhoypur Reserve Forest.

They had also killed six Assam Forest Staff in most brutal manner. In that context and as already agreed at Commissioners level meeting on 21st February, 1985 it was urgently felt that the southern boundary of Abhoypur Reserve Forest be demarcated. Under one pretext or the other Nagaland side were not willing to honour the decisions already taken. In view of their lack of will to honour the earlier agreements no concrete decisions could be taken regarding commencement of demarcation works.

The Nagaland side were adamant in their demand that the Forest Check Gate and Merapani Police Station of Assam should be removed as a condition for withdrawal of Nagaland Armed Police from that area. It is pertinent to note that Merapani outpost started functioning from 1st June, 1972 which was upgraded to police station in 1983 and one Border Out Post against Nagaland Check Gate had been established on 16th January, 1979 immediately after unfortunate incidents of Chungajon Tin Ali where about 40 innocent Assamese villagers were brutally murdered by the armed Nagas supported by Nagaland Armed Police. When Border Out Post was withdrawn for law and order duty, vacant accommodation was taken over by the existing Merapani Police Station. As such withdrawal of Merapani Police Station as a pre condition to the withdrawal of Nagaland Armed Police was not only irrelevant but absolutely unjustified.

With regard to maintenance of the Check Gate ample justifications were offered to Nagaland side and on their getting convinced, check gate was allowed to remain although the operation was suspended for ten days to facilitate disengagement of two police forces. It is further stated that Assam officers had gone to Chumukedima for the meeting primarily to discuss the Merapani incidents and defuse the situation at the earliest opportunity as attempts made earlier had failed because of extra-ordinary authority assumed by the Deputy Commissioner (Wokha) and attitude of Nagaland Government. Nagaland authority was directly responsible to make Merapani situation 'explosive'.....To allege that a decision could not be taken on the points raised by Inspector General of Police, Nagaland (regarding Forest Check Gate) is wrong because the fact is that a decision was taken about the check gate which was signed by two Commissioners (obviously referring to the 4th June meeting) but curiously Inspector General of Police, Nagaland, announced that he would not be a party to Commissioners' agreement and, therefore, he refused to sign the agreement."

10.7 Whether there was an agreement on the point between the two sides or not, the account of the meeting of 3rd June given by Assam shows that in point of fact it was other items which were discussed in the first instance and the Merapani matter was taken up only in the late afternoon at about 4 PM. This would tend to confirm the contention of Nagaland that although they (Nagaland) were extremely anxious that the Merapani situation be discussed as topmost priority matter, Assam were dragging their feet on the issue and insisting on other comparatively minor issues being dealt with first. Nagaland have said that they tried to raise the question of Merapani by taking it up first, that being the burning issue before the meeting. In N-I, para 61, Nagaland have said that the Inspector General of Police, Nagaland on behalf of Nagaland authorities pointed out that the situation at Merapani was explosive and, therefore, the police forces of both sides should be immediately disengaged and the pre-20th April, 1985 position re-established to restore peace in the area. On this it was stated on behalf of Assam that the so-called Forest Check Gate erected by the Assam Forest Deptt. after the 20th April, 1985 could not be withdrawn because, in the first place, it was a legal requirement and secondly; it was a reaction to the manner in which the Merapani situation had developed. Thereupon, according to Nagaland, the Inspector General of Police, Nagaland suggested that at least the so-called Forest Check Gate should not be operated for a few days and the matter might be referred to the two Chief Secretaries for decision. The Assam delegates then declared that the check gate was not in their brief and they were not in a position to withdraw or temporarily suspend the activities of the check gate. Nagaland continued to insist that the situation being explosive, a decision had to be taken on the points raised by the Inspector General of Police, Nagaland. On this Inspector General of Police (Border) Assam went out of the meeting followed by the Commissioner, Assam and after some time they came back and announced that the meeting would continue the next day—presumably to take instruction in the meantime on the points raised on behalf of Nagaland. The meeting was then adjourned with the understanding that the issue would be taken up next day when the meeting would continue in the presence of Home Ministry's representative.

10.8 It will be relevant to refer to the recorded note of discussions of the meeting held on 3rd June. The admitted note of discussions of this meeting annexed at A-16 of A-I shows that the meeting had started on a cordial note and with the declared resolve of both the States to iron out their differences through discussions in order to maintain peace and amity along the border. The two Commissioners arrived at a decision regarding demarcation/construction of pillars from Tiyyok river to Tokok river and the Southern boundary of Abhoypur Reserved Forest. These proceedings do not contain any mention of discussions relating to Merapani. Nagaland had, however, pointed out that their officers were continuously expressing concern at the explosive situation at Merapani and wanted it discussed first. Noting the insistence of the Assam Officers to dispose of other minor agenda

items, the Inspector General of Police, Nagaland (Shri Watts) recorded a note of dissent which has been annexed as Annexure 118 to the Nagaland affidavit in N-I. It will be desirable to quote the suggestions of Shri Watts in full in order to appreciate the anxiety of the Nagaland officers to discuss the Merapani situation :—

“Nagaland Authorities pointed out that situation at Merapani is highly explosive, and, therefore, Police Forces on both sides should be immediately disengaged and pre-20th April, 1985 position should be re-established, to restore peace in the area. The Assam delegates appreciated the explosiveness of the situation; but felt that Forest Check Gate erected by Assam Forest Department after 20th April, 1985 was not possible to be withdrawn; because first, it is a legal requirement and secondly, is the reaction to the manner in which Merapani situation is developed. Upon this, Nagaland delegates suggested that at least the Forest Check Gate should not be operated for a few days and the matter may be referred to the two Chief Secretaries for decision. The Assam delegates felt that the Check Gate was not in their brief and they are not in a position to withdraw or temporarily suspend the activities of the Forest Check Gate which was set up after 20th April, 1985.”

10.9 The question, therefore, arises as to whether the Assam Government officers were disinclined to discuss the Merapani issue on the ground that they had no mandate from their Government. For this purpose it will be relevant to refer to the evidence produced by both the sides. This is what the witnesses of Assam have to say on the issue.

10.10 Shri M. S. Pangte, Commissioner, Northern Assam Division holding additional charge of Commissioner, Upper Assam Division stated in his affidavit as under :—

“.....The meeting started at 2 PM and even in the absence of Shri Arya it was jointly agreed meanwhile to dispose of other important items. Nagaland side did not show any interest in the eviction of encroachers from Roni basti as also from the land earmarked for Amguri-Tuli railway line. Similarly, they were not willing to cooperate in the matter of demarcation of Abhoypur Reserve Forest. Discussions on Merapani took place from 4 PM to 7.30 PM even in the absence of the representative of the Government of India. Nagaland side was adamant in their demand that Forest Check Gate and Merapani Police Station of Assam should be pulled out as a condition for withdrawal of Nagaland Armed Police from that area.....”

Oral evidence of Shri Pangte :—

“It is not correct that Nagaland side at the outset of the 3rd June meeting mentioned about

discussing Merapani issue first. It was only at later stage at about 3 PM that Inspector General of Police, Nagaland did mention that we should discuss Merapani. It is not correct to say that Assam side avoided discussion about Merapani at any stage. In fact, the Government of India representative had not arrived and meanwhile two Commissioners agreed to dispose of a few other items in the agenda. The Merapani issue was discussed at about 4 PM onwards till 7.30 PM on 3rd June. The minutes of the meeting did not mention the Merapani discussion since the discussion was inconclusive which was to be resumed on the 4th June. All I said at the 3rd June meeting was that Forest check gate was not in my brief. When I talked to the Home Commissioner on the telephone on the 30/31st I knew what the stand of the Government on the Forest Check Gate was. And the Assam Government stand was that the Forest check gate should not be withdrawn. When I said that the Forest check gate matter was not in my brief this was with regard to my not being able to take a decision about its withdrawal. I do not agree that even if as late as the 3rd June the Forest check gate had been withdrawn, the conflict could have been avoided because Nagaland side took adamant stand that the Forest check gate and the Police Station also should be withdrawn.

Shri B. D. Kharkwal in his evidence regarding what transpired in the 3rd June meeting stated :—

“..... It is a fact that when the Nagaland side suggested that the Merapani issue will be taken up, the Assam side said that there were some other matters which might be taken up first. It is a fact that considerable anxiety was expressed by the Nagaland side about the Forest check gate and they had suggested its immediate removal or suspension of its operation. It is correct that on this the Assam side said that this was not in their brief and so they could not say anything in the matter. The meeting was adjourned to the next day.....”

Oral evidence of Shri A. K. Palit, formerly Chief Secretary, Assam :—

“I recollect that one day Home Secretary asked me near about that period—Annexure 32 of A-III—whether the check gate should be withdrawn. I told him that the matter should be discussed at the Commissioners level meeting and action taken as advised by the Central Observer. There was no discussion over the phone between the Commissioner, Upper Assam Division, and me. No instruction was given to the Commissioner, Upper Assam Division for not withdrawing the Forest Check Gate. He was asked to discuss all these issues at the Commissioners level meeting and resolve

them as advised by the Central Observer. The discussion took place between the Commissioner, Upper Assam Division and the Home Commissioner."

10.11 Nagaland witnesses have said as follows :—
Oral evidence of Shri K. L. Watts, formerly Inspector General of Police, Nagaland :—

"The meeting commenced later than the scheduled time. The venue was Nagaland Police Officers Mess, Chumukedima. The meeting got so delayed that I decided to go back to Police House and join the meeting on arrival of Assam side delegates. When I was informed that Assam delegates had arrived, I returned to the mess, the venue of the meeting. Amongst the Assam delegates, S/Shri B. D. Kharkwal, IGP(B), M. M. Sagar, former DIG Jorhat but at that time DIG Tezpur, P. V. Sumant, DIG Jorhat and Malik, S.P. were known to me. They were sitting together. After wishing everybody I went straight to them..... I specifically and pointedly told them..... that we should..... decide to disengage withdraw and defuse the situation. Otherwise should anything untoward happens we are going to be blamed.

It is a matter of deep regret that when the meeting started and I repeatedly interrupted the meeting with the request that Merapani issue should be discussed first. All these officers did not support me because they did not say anything. The meeting was as per practice under the Chairmanship of Commissioner Jakhalu but soon it started being conducted by Shri Pangte, Commissioner, Tezpur also holding the charge of the office of the Commissioner, Jorhat. After my repeated interruptions Shri Pangte said something to this effect—Mr. Watts we will come to Merapani later. First, we want to carry something in our basket back home. Merapani issue could not be taken up till after lunch approximately 3 PM.....

After lunch when Merapani issue was taken up, I spoke on the subject besides others. I spoke to this effect—there is a general alert issued by the Government of India on the occasion of Blue Star Operation anniversary. We do not have sufficient force even for that purpose. The situation at Merapani is so explosive that we should immediately disengage, withdraw and defuse the situation.....

I have in my possession a piece of paper where I had made a note of what I had said and what the Assam side said. The meeting continued without decision being arrived at. One immediate step suggested by me when I spoke again was that the so-called Forest Check gate should be removed and status-quo-ante 20th April, 1985 should be

ensured. Assam side said it was not possible to remove the gate upon which I said that in any case its functioning should be stopped and the matter referred to the two Chief Secretaries. In fact, I had suggested that the matter should be referred to the two Chief Ministers and until then the gate should not function....."

Shri N. Jakhalu, Commissioner, Nagaland stated in his affidavit :—

"..... the Government of Assam was, however, not agreeable to withdraw the so-called Forest check gate alleged to have been erected by Assam Forest Department after 20th April, 1985. Thereafter, it was suggested by the Government of Nagaland that atleast the so-called Forest check gate should not be operated and should be kept suspended for a few days so that the matter may be referred to the Chief Secretaries of the States for their decision. The representatives of the Assam Government, however, stated that the said check gate was not in their brief and as such they were not in a position to give any commitment either to withdraw or temporarily suspend the activities of the so-called Assam Forest check gate. I insisted that the situation being critical, a decision must be taken on the points raised as aforesaid, whereupon the Commissioner, Assam and IGP(B), Assam went out of the room to have a private discussion between themselves. After some time they came back and announced that the meeting would continue next day. I presumed that the representatives of the Assam Government wanted to take instructions in the matter on the point raised on behalf of Government of Nagaland. We agreed to these suggestions more so, since we were informed that the Home Ministry representative Mr. S. R. Arya who had been unable to attend the meeting that day would be arriving on the 4th June, 1985, I honestly and sincerely believe that if a decision on the points raised by me in the meeting on 3rd June, 1985 would have been taken on 3rd June itself or even on 4th June, 1985 in the presence of Shri Arya, representative from the Home Ministry, the unfortunate armed conflict would have been averted."

Oral evidence of Shri Shurhiu, Deputy Inspector General (Border), Nagaland :—

"... When the meeting started the IGP, Nagaland stood up and suggested that Merapani case should be taken up first. However, it was not taken up. The subject was not discussed....."

10.12 It is only because of the presence or otherwise of the Central Observer that the Chumukedima meeting is being considered in two parts—the meeting

of the 3rd June when the Central Observer Shri S. R. Arya could not be present and the 4th June meeting when the meeting was held after his arrival in the afternoon. While it is the business of the States concerned to sort out any problems existing on their borders and the Government of India is not supposed to act as a nursemaid, the fact, however, is that in this particular relationship between Assam and Nagaland, because of various unfortunate things that had happened in the past, a system of Commissioner-level meetings with a Central Observer attending had come to be institutionalised. After the January 1979 incident, for about two to three years the Central Observer was very much in evidence at these meetings and it is the common judgment of both States that he played a no mean part in getting various problems sorted out.

10.13 It is in this context that both the State Governments, had, after the situation started worsening in April 1985, suggested to the Government of India a Commissioner-level meeting to be attended by a representative from the Ministry of Home Affairs. It will be seen from the various messages already referred to earlier in this Chapter that the suggestions to the Government of India for such a meeting were made as early as about the end of April 1985. At that time the so-called Forest Check Gate had not been set up by the Assam Government nor had any reinforcements moved into Menapani from either side. The question that was exercising the two sides was the fencing at the Inner Line Permit Check Gate on 20th April 1985 and subsequent events that had taken place over the following two to three weeks. In fact, after the dates of the proposed meeting had been changed two or three times, the final date viz. June 3, 1985, seems to have been settled on the 21st of May 1985—before the setting up of the Forest Check Gate and the other problems that followed.

10.14 However, this does not mean that the subsequent discussions at the meeting when it was eventually held on the 3rd June 1985 should be limited to the fencing at the Inner Line Permit Check Gate etc.—or that other areas which though important were not really of such burning importance at that time like the Runi Basti settlement, or the Abhoypur Reserve Forest demarcation etc. should take precedence over the immediate issue. The whole objective of those Commissioner-level meetings and in particular those which were attended by Central Observer, was to defuse tension on the borders and sort out the various problems which were contributing to such tension. On the 3rd June 1985, therefore, when the Forest Check Gate had already been set up, sizeable Assam police had moved into the Merapani area and then equally sizeable Nagaland Armed Police had also come in, the obvious point of extreme importance for discussion was what was leading to the heightening of tension at that immediate point.

10.15 There is no doubt that the Nagaland authorities were extremely exercised over this Forest Check Gate matter. It has been noted earlier that rightly or wrongly they considered this an assault on the honour of Nagaland—at least this is the language that has

been used in some messages exchanged between the various Nagaland authorities. It was under the circumstances wrong on the part of the Assam authorities to have taken the stand that the Forest Check Gate could not be discussed as it was not within the brief of the officers attending the meeting. What was the point of attending if this crucial issue was outside the scope of discussion?

10.16 Shri Pangte has clearly indicated that he was told by his State Government that the question of removing the Forest Check Gate was not to be discussed. The fact that he had sought the advice of his Government in this matter is quite clear from—Annexure 32 in A III—. It is true that in evidence Shri Palit, who was then Chief Secretary, Assam has said that he had told the Home Commissioner that the question of withdrawal of the Forest Check Gate could be discussed at the Commissioners-level meeting and action taken as advised by the Central Observer and that no instructions were given to the Commissioner (Upper Assam Division) for not withdrawing the Forest Check Gate. Either there was a failure in a proper understanding on the part of Shri Pangte of what the Government decision was or no such decision was conveyed to him. Otherwise, it is difficult to imagine why Shri Pangte, who was Commissioner of a Division and bound to comply with any policy directives from the State Government, should take the stand that the Forest Check Gate was not within his brief. It is of course possible that the Assam authorities present at the meeting wanted a discussion in the matter to take place in the presence of the Central Observer—but then this could easily have been so stated at the meeting on the 3rd June. The conclusion, therefore, that seems to be more or less inescapable is that the Assam authorities had come to this meeting to discuss not the issue that was most important at this time but to deal with generalities and so on.

10.17 It is not for this Commission to go into the reasoning which impelled the Assam authorities to adopt such an attitude but obviously, their approach could well have been that unauthorised fencing had been taken up without their permission, an agreement of 1st May for withdrawal of forces had not been implemented because of the problems created by the Nagaland district authorities, that in spite of their strong opposition to the fencing, it had proceeded apace and had in fact been completed along with some tubular structures etc, which had earlier been objected to in 1979. Therefore, their reading of the situation could then be that the time for any further discussion at State-level had gone and that it was better to establish a strong presence through a barrier like Check Gate, backed up by the Assam Police and to leave the running around to the Nagaland authorities. This in fact was also the suggestion made by the State Forest Minister in his recommendation to the Chief Minister.

10.18 This was, however, an unfortunate approach. It should have been obvious on the 3rd June that the Nagaland authorities were determined to have the

Forest Check Gate removed. The Commission has already referred to the kind of messages that were being sent by Deputy Commissioner Wokha to his Commissioner and Government suggesting removal of this obstruction by force. In this background, no matter how frustrating their earlier experience as they perceived it, the Assam authorities should have taken a more constructive approach to discussion of the removal of the Forest Check Gate. This they did not do on the 3rd of June 1985.

Meeting on 4th June

10.19. The Commissioners meeting was resumed on the 4th June and effective sitting started after the arrival of Shri S. R. Arya, Joint Secretary, Ministry of Home Affairs in the afternoon. While the meeting was in progress, Inspector General of Police, Nagaland (Shri Watts) stood up in the meeting and informed the gathering that fierce fighting had started between the Assam armed police and Nagaland armed police in the Merapani area at about 1630 hours. The meeting was hurriedly concluded. A joint message was also issued by the Deputy Inspectors General of the two States asking their respective armed units in Merapani to cease fire immediately.

10.20 The minutes of this meeting and the wireless message issued jointly by the Deputy Inspectors General of the two sides are relevant and reproduced below :—

- "1. The serious situation which has recently developed at Merapani has been discussed in detail. Even while the discussion was going on it has been brought to the notice of the Commissioners that the police forces of the two States have started firing on each other in Merapani area. It has, therefore, been decided in the interest of saving human lives and defusing the situation that both the parties must cease fire at once. The position as it obtained on 19th of April, 1985 should be restored at once by the Deputy Inspectors General of two States.
2. Both sides agreed to make all out efforts and instruct their police forces along the border to provide full protection to the villagers particularly in Merapani sector in villages like Barrgharia, Sibangpar, Merapani Forest village, Negheribill, etc.
3. It was also agreed that the Assam Forest check post re-established on 26th of May, 1985 would not be operated for a period of 10 days in the interest of achieving (1) above. The matter shall be brought to the notice of the Government of Assam with regard to its continuance or otherwise.
4. It was agreed that both sides will not allow miscreants to harass, kidnap, trespass or cause injury to the life of villagers or damage their property in the border areas."

Joint message of the Deputy Inspectors General of two States

"PSE STOP FIRING AT EACH OTHER IMMEDTLY RPT IMMDTLY (.) WE ARE COMING TO MERAPANI (.) RAISE WHITE FLAG IMMDTLY ON STOPPING FIRING IN EACH OF YOUR POST (.)"

10.21 Apart from this, it was also agreed by both sides that the Deputy Inspectors General concerned of the two States will show white flags on the morning of the 5th to the Commanders of the respective States in order to enable them to effect cease fire. It was also decided that the Deputy Inspector General (Eastern Range), Assam, Deputy Inspector General of Police (Border) and Deputy Inspector General of Police, Nagaland Armed Police, Nagaland should go to Merapani to put an end to the firing and to disengage the forces.

10.22 According to the Assam side, though the Nagaland Police Officers initially agreed to go to Merapani via Golaghat which was the shortest route they later on declined to accompany the Deputy Inspector General of Police (Eastern Range) and wanted to go via Wokha—a route which would take them nine hours to reach Merapani. In pursuance of the agreement arrived at between the two States, the Deputy Inspector General of Police (Eastern Range), Jorhat reached Merapani at about 8 PM on 4-6-85 and in the morning of the 5th, he declared cease fire and showed white flags on the part of Assam. It was also announced over loudspeaker that the Deputy Inspector General of Police (Eastern Range) was waiting to meet the Deputy Inspector General of Police, Nagaland, to effect the cease-fire. Meanwhile the Assam Police stopped firing at 8.10 AM. However, to the dismay and regret of the Assam Government, the Nagaland Armed Police continued firing at the Assam Police and did not spare even the ambulance with a white flag sent by Assam to collect the injured from the Velluguri side. The Nagaland Armed Police also fired at the Deputy Inspector General of Police (Eastern Range) while he was proceeding to contact Deputy Inspector General of Police, Nagaland, flying a white flag. The Assam side allege that the Nagaland Government were not at all keen to effect cease-fire and continued to attack the Assam armed police being equipped with sophisticated weapons like 2" mortars, Light Machine Guns and even rocket launchers. They were also backed and supported by 4000 to 5000 armed villagers including village guards.

10.23 The Nagaland Government, on the other hand, stated that their officers tried to show a white flag to honour the cease-fire agreement but there was no response from the Assam side who continued shelling with greater intensity and burnt their Inner Line Permit Check Gate. In view of this, Nagaland had no alternative but to silence the guns of Assam in order to protect themselves.

10.24 The crease-fire of the 4th June therefore remained unimplemented and fighting continued till the 6th June when under instructions of the two Chief Ministers the two Commissioners again met at Chumukedima. The meeting was held at 3-30 PM on 6th

June and attended by Inspector General of Police, Nagaland, and Inspector General of Police (Border) Assam also. The decisions—Annexure 41 in A III—taken were total stopping of fighting in all Sectors with effect from 2200 hrs of 6th June; simultaneous withdrawal between 2200 hrs of 6th June and 0700 hrs of 7th June, neutral forces to take position by 0400 hrs of 7th June; Deputy Inspectors General of Police to move with neutral forces at 1000 hrs of 7th June and meet at Merapani Police Station to discuss further steps to be taken to implement the agreement arrived at earlier on 4th June at Chumukedima and which had remained unimplemented; the Assam Forest Check Gate matter to be referred to the two Governments for immediate decision; and, the two Deputy Inspectors General of Police were to be personally responsible for stopping fire and withdrawal of the two forces to the pre-20th April 85 position.

10.25 The arrangement—Annexure 16 in N-II—finally arrived at between the two Governments on the stopping of fighting etc. as determined at the meeting of the two Chief Ministers the next day viz., 7th June 85 was somewhat different in as much as the *status quo ante* was now taken to be the position prior to the incidents starting on 26th May 85 and not the 20th April 85. The relevant clause here was:—

“To give effect to the need of immediate restoration of *status quo ante*, police forces of both the States will go back to the positions held before the current series of incidents starting on 26th May 85.”

10.26 As to the actual fighting till the 6th June evening, the Assam Armed Police first captured the Inner Line Permit Check Gate of Nagaland at Merapani and there is also an allegation by Nagaland that it was burnt by the Assam Police. Later on, as a result of assaults made by the Nagaland Armed Police, the Forest Check Gate of Assam and the Assam Velluguri Post fell and the Assam Armed Police vacated these areas. By the 6th June, the Merapani Police Station had also been captured by the Nagaland Armed Police and was later reported to have burnt. In the course of this conflict, Merapani bazar was reduced to ashes and nearby settlements of Odalipathar, Sisupani and Harupani were burnt down. The inhabitants of these places fled towards Golaghat and took shelter in refugee camps set up by the Assam Government.

10.27 The account given above shows that in the first instance the Chumukedima meeting could not achieve any results in the sense that the two sides could not come to a settlement regarding the Forest Check Gate. Secondly, and this happened even while the meeting was going on, fighting between the forces started. Thirdly, after the meeting had been overtaken by this development and took a decision for an immediate cease-fire, this cease-fire did not for various reasons become effective. It was left to a subsequent meeting between the two sides on the 6th June to come to some further agreement and it was only then that the fighting amongst the forces of the two States ceased.

10.28 The first point has already been dealt with earlier. It will be relevant to discuss the other two points viz. :—

- (i) What precipitated the actual start of the fighting; and
- (ii) Why the cease-fire decision of 4th June was not implemented.

How the fighting started ?

10.29 There are different versions as to who fired the first shot. The Assam side allege that the Nagaland Armed Police accompanied by armed Naga villagers mounted a simultaneous attack on Assam police posts and Border Out Posts at Velluguri and later after 4 PM on 4th June followed this by their attack at Upper Merapani, Merapani Police Station and bazar, Negheribill, Sisupani and Dighalpani. On the other hand, the Nagaland Government maintain—N I—first on 4th June, 1985, a small contingent of Nagaland Armed Police was sent to reach the Government Seed Farm at Velluguri to give rations and other supplies to the Nagaland Armed Police personnel stationed there. They were spotted by an Assam police party on their way to the Government Seed Farm and were fired at with IMG. This firing commenced at 1600 hours. The said detachment was compelled to return the fire. This was followed by the Assam Armed Police post next to the Government seed farm firing on the Nagaland Armed Police post. When the firing started in the Government Seed Farm area the sound of gun fire could be heard in the locality all over Merapani. Almost simultaneously, the Assam Armed Police posted at the Assam Police Station opposite Nagaland Inner Line Permit Check Gate also started firing at the Nagaland Inner Line Permit Check Gate, while the Nagaland Police posted there were taking their meals. Since the Nagaland Armed Police were heavily fired upon and totally out-numbered by the Assam Armed Police, the Nagaland Armed Police had to leave their post at the Inner Line Permit Check Gate and retreated to the base camp at the Nagaland Armed Police Company Headquarters in the foothills. Thereafter, firing commenced from the Armed Police post at the Forest Check Gate area and the firing was directed towards the Headquarter of the Nagaland Armed Police Company in Merapani village towards the foothills. In this way, the entire Merapani Village area was engulfed with continuous firing from both sides. The Assam Armed Police vacated their armed post near the Nagaland Government Seed Farm on the 5th June morning followed by their Forest Check Gate. Finally, the Assam Armed Police vacated Merapani Police Station, ammunition dump and also Headquarters located near the Merapani bazar, leaving behind a large number of arms and ammunitions.

10.30 From these two versions it is apparent that according to the Assam side there was a determined and pre-planned attack by Nagaland Armed Police on the Assam Armed Police post while the Commissioners level meeting at Chumukedima was going on. According to Nagaland, it was the Assam Armed

Police which had attacked their small contingent who were carrying rations for their seed farm at Velluguri and were fired upon by the Assam patrol party.

Assam evidence

10.31 The Counsel for Assam has cited the oral evidence of Assam Witnesses—1, B. D. Kharkwal, Inspector General of Police (Border) Assam Witness-3, B. K. Gohain, Additional Deputy Commissioner (Border), Assam Witness-4, A. K. Mallik, Superintendent of Police, Jorhat, Assam Witness-7, M. S. Pangte, Commissioner, Upper Assam Division, Assam Witness-8, P. V. Sumant, Deputy Inspector General (Eastern Range), Assam Witness-10, A. K. Palit, former Chief Secretary, Assam, Assam witness-11, J. S. Pathak, former Director General of Police, Assam, Assam Witness-3, M. R. Choudhury and Commission Witness-6, I. Longkumer, Chief Secretary, Nagaland.

10.32 Assam Witness-1, Shri B. D. Kharkwal, former Inspector General of Police (Border) Assam in his affidavit says :—

“.....It may be stated here—in that Assam Police had to resort to firing in self-defence which is evident from the fact of loss of quite a good number of lives of police personnel.”

In his cross-examination Shri Kharkwal stated :

“It is not correct that when the conflict started at about 4 or 4.15 on 4th June the first shot was fired by Assam Police on a small contingent of Nagaland Armed Police personnel who were taking rations to their post in the seed farm.”

Shri Pangte in his affidavit has stated :—

“After signing the cease fire agreement on 4th June I and Inspector General of Police (Border) rushed to Golaghat and were informed that all our posts in the Merapani area were under heavy firing by Nagaland Armed Police.”

10.33 Shri C. Barua, Deputy Commissioner, Jorhat has stated in his affidavit that he had received information from Additional Superintendent of Police, Jorhat and Sub-Divisional Police Officer, Golaghat which indicated that firing had been started first by Nagaland Armed Police personnel. Three W.T. messages contained in—A III at Annexure A-61 are relevant and reproduced hereunder :—

No. JC 6/85/218 dated 4th June, 1985 from DEPCOM Jorhat to Assam Dispur :—

“Information received from ‘D’ Sector (Merapani Area) is that the entire Border area already surrounded by NAP and NAGA public armed with lethal weapons. Attack from their side apprehended any time. Reinforcement required immediately. Veluguri (Veluguri) post has become very much vulnerable. Details awaited. Situation under watch. Precautionary measures con-

tinuing. Para. DIG(ER)/DISPOL Jht besides Commr. NAD/IC/UAD attending the meeting at Chumukedima.”

No. JC 6/85/221 dated 4th June, 1985 from DEPCOM Jorhat to DEPCOM Wokha (Nagaland) :—

“Further information received today (4th June, 1985) that all along the entire border of Merapani area NAP and Naga civilians armed with lethal weapons have gathered to launch attack upon the AP personnel and non-Naga civilians of that area. We condemn this provocative aggressive designs and vehemently protest against these illegal activities of yours. Request refrain yourself from launching any attack on the AP personnel and Non-Naga civilians of our reserved forest areas. Further if anything happens, you will be fully responsible for all consequences.”

No. JC 6/85/222 dated 4th June, 1985 from DEPCOM Jorhat to DEPCOM Wokha (Nagaland) :—

“Further information received that NAP personnel started heavy firing at Merapani and veluguri area at 1700 Hrs. today (4th June, 1985). Firing still continuing. We condemn and protest vehemently this uncalled for provocative attack. Request withdraw your forces forthwith and stop this type of aggression. For all consequences I rpt. you will be responsible. Be it noted that prevailing situation may compel us to take defensive measures.”

Shri P. V. Sumant, Deputy Inspector General of Police (Eastern Range) stated in his affidavit as under :—

“That on reaching Merapani, I found that there was a heavy exchange of fire going on between both the forces all along the border from Nagheribill upto Dighalpani. It was reported by our posts that the NAP commenced firing at our posts at about 1615 hrs. The NAP started simultaneous firing on the A.P. Posts from Veluguri to Merapani area and then on Dighalpani and Nagheribill areas also as if on pre-arranged signal. They also started heavy shelling with mortars and firing with machine guns from pre-established locations on the hill slopes which had commanding range of fire over the entire Merapani Sector including the Merapani Bazar, Rear BOP and all the villages and posts from Dighalpani to Nagheribill. It was clear from this that the NAP had pre-planned the whole affair and established their machine gun locations on the hill slopes, mortar positions in the Nullahs towards Merapani P.S. and set up bunker posts surrounding the A.P. Posts on 2nd and 3rd June, 1985 while we were busy at Chumukedima.”

Shri A. K. Mallik, Superintendent of Police,
Jorhat in his affidavit says:—

“.....That we reached Merapani at 2000 hrs on 4-6-85 from Dimapur and found heavy exchange of fire between the two forces all along the border from Nagheribill upto Dighalpani.....”.

10.34 S/Shri Gohain, Pathak, Chowdhary and Palit could not say who fired the first shot. None of them were present at Merapani when firing started. S/Shri D. Sharma and S. Kalita, Sub-Inspectors Police, Assam were posted at Merapani and were the only two Assam officials present at Merapani at the time the firing started. In their affidavits, they have blamed Nagaland Armed Police for having started the firing first.

10.35 It will be seen that the various averments made in affidavits filed by Assam witnesses or statements made by them in oral evidence before the Commission are based on reports received by the officers concerned. None of these officers was an eye-witness to the actual start of the fighting between the two forces. Nor for that matter were the two Police Officers from the Assam side, Digen Sharma and S. Kalita. Kalita had been posted as Officer-in-Charge of the Merapani Police Station on the 9th May 1985 and Digen Sharma continued to be the Second Officer. The averments made in their affidavits are more or less identical, and it is quite obvious that while they could have been present at Merapani they had no personal knowledge of any firing or how the fighting started. We thus have before us only the averments/statements of the Assam side to the effect that fighting started as a result of a pre-planned move on the part of the Nagaland authorities and that matters were precipitated by them.

10.36 It has to be seen whether there is more worthwhile evidence forthcoming from the papers filed by the Nagaland side or the oral evidence that has come on their behalf before the Commission.

10.37 The Counsel for Nagaland seems to feel that whatever has come on behalf of Nagaland was more credible and worthy of belief rather than what had been put forward on behalf of Assam. He referred in arguments on this point to the averments and statements of Shri T. M. Wati who was then Commandant of the 1st Battalion of the Nagaland Armed Police. It is said that admittedly Shri Wati was at Merapani on the 4th June and he has said in evidence that when Deputy Inspector General of Police, Nagaland Armed Police had gone for the Commissioner-level meeting, he was the only Commandant at Merapani in charge of the Nagaland Armed Police. It is further contended that it is his evidence which is the only first-hand evidence available regarding the starting of the fight on the 4th June.

10.38 The relevant part of Shri Wati's affidavit reads as follows on pages 129-130 of N III:—

.....

6. That report received to the effect that dry rations for NAP personnels at Government Seed Farm had exhausted and therefore I sent rations for NAP post at Nagaland Government Seed Farm through one Bed-Ford truck at about 1300 hrs. on 4th June 1985. Since the road to Velluguri via Nagaland Check Gate was blocked by the so-called newly established Assam Forest Check Gate manned by Assam Police Task Force including Assam Armed Police, I was compelled to despatch the said rations through the village Dev. Board road.
7. That the vehicle carrying ration bogged down at a distance of about half kilometer from the NAP Post at Nagaland Government Seed Farm. The said location was also visible from the NAP pickets placed on the nearby hillock. Seeing the helpless condition of the driver and handyman of the said vehicle the NAP personnel from the pickets on the hillock went down and started pushing the vehicle from the place where it got bogged down. At that time the Assam Armed Police patrolling party from the direction of Velluguri fired upon the NAP personnel who were pushing the said vehicle. Then the NAP personnel waited for some time but again after some minutes, Assam Armed Police started firing with 2" mortars, LMGs and other fire arms. Finding no other way, NAP personnel had to fire in self defence. Simultaneously all the Assam Armed Posts and pickets in the area started firing at all the NAP posts and pickets. In the said attack on 4th June 1985 at about 1600 hours, one NAP constable was injured."

Oral evidence of Shri T. M. Wati:—

“.....At 4 O'clock we received information that one of our bedford trucks carrying rations for Seed Farm bogged down on 4th June. Seeing the helpless conditions of Driver and Handyman our pltns which was deployed on the hill side came down to help them, about 20 boys came down, they were armed, they started pushing the truck. In the meantime the Assam patrol party came and started firing on them. When the firing continued the NAP boys had to return the fire in self-defence. One boy of NAP was injured. I do not know how many Assam boys were injured in this firing. I do not exactly know even today.”

10.39 It is, therefore, the case of the Nagaland side that fighting started after Nagaland Armed Police personnel had come from the hillock to help the Bed-ford truck which had got bogged down and were fired upon by the Assam Armed Police patrolling party. In fact, in the first instance the firing was not returned but after some time the Assam Armed Police again

Equipped with 2" mortars, LMGs and other fire arms. It was only then that Nagaland Armed Police personnel had to fire in self-defence.

10.40 In other documents that have been filed by the Nagaland side, however, the account given by them as to the start of the fighting is different. The Bedford truck figures only in the statement or the averment contained in the affidavit by Shri Wati. The basic document that was filed before the Commission on the entire Merapani episode has this to say about the start of the firing :—

2nd para at page 94 of N-I :—

".....On 4th June, 1985, a small detachment of NAP was sent to reach the Government Seed Farm to give rations and other supplies to the NAP personnel stationed there. They were spotted by an Assam Police Patrol on their way to the Government Seed Farm and were fired upon by light machine guns. This firing commenced at 1600 hrs. on 4th June, 1985. The said detachment of NAP was compelled to return the fire. This was followed by firing by the Assam Armed Police post next to the Government Seed Farm. When firing started in the Government Farm area, the sounds of gun fire could be heard in the locality, all over Merapani. Almost simultaneously, the Assam Armed Police posted at the Assam Merapani Police Station-cum-Armed post, opposite the Nagaland ILP Check Gate also started firing at the Nagaland ILP Check Gate while the Nagaland Police posted there were taking their meals. One of the policemen, Trilok Bahadur was shot dead even before he could reach for his gun....."

10.41 It is not clear from this whether the small detachment of the Nagaland Armed Police sent to the Government Seed Farm travelled on a Bedford truck as has been stated by Shri Wati or went on foot.

10.42 After the Merapani incident, a report was prepared by Shri Jakhali, Commissioner, Nagaland, on the whole episode and is available at pages 215-216 in file No. CCB 3/82-Vol.II, which has been filed by the Nagaland Government before the Commission. The relevant extract is given below :—

"The new Assam Forest Check Gate became such an irritant to the Nagaland Authorities that request was made to Assam Authorities at various levels to suspend or dismantle the said Check Gate but Assam Authorities refused to comply with such repeated requests. After the establishment of this check gate, the NAP could not reinforce or resupply their force at Nagaland Government Check Gate at Merapani and the platoon post at Seed Farm. Under the above circumstances a platoon strength of NAP personnel w

rations, supplies etc. was detailed on foot to the Seed Farm post on the afternoon of 4th June 1985. The party before reaching the isolated Seed Farm NAP post was fired upon by the Assam Police post which is located near the said NAP post at about 4 PM on the same day (i.e. 4-6-85). It could not be ascertained how the firing spread all over the places, but it appears that since the situation was tense on both sides exchange of fire took place after hearing the firing in the Seed Farm area."

10.43 There is yet another account contained in the documents filed by the Nagaland authorities. There is a report dated the 15th June, 1985 submitted by Shri Aliba who was Deputy Inspector General of Police, Headquarters, Kohima. This report is available in file No. CON/26/85-Vol. I at pages 46-47.

".....Report was received at this Headquarters to this effect from Commandant 4 NAP and therefore the matter was taken up with Government and arranged a DIG's (Border) level meeting of both States on 30-5-85 and they arrived at an agreement that their respective policemen at Merapani area will be confined in barracks and neutral force (28 Bn CRPF) will patrol the area under the command of B Sector Commander, Deputy Commandant, Shri Gidda. This agreement was observed in letter and spirit from our side. However, it is unfortunate that Assam police sent out their police patrol party on 4-6-85 in violation of the agreement and resorted to unprovoked firing at NAP post who were constructing temporary shelter for the personnel to reinforce the post in Velluguri area. The NAP still maintained the agreement and exercised extreme restraint from resorting to firing at the Assam Police for more than half an hour. Yet, the Assam Police continued unprovoked firing against Nagaland Police and having no other alternative, the Nagaland Police started firing against Assam Police in self-defence....."

10.44 According to this account, the fighting did not start as a result of firing by the Assam Armed Police from their outpost at Velluguri or by an Assam Armed Police patrol party on a Nagaland Armed Police detachment which wanted to go with rations to the Nagaland Armed Police post in Velluguri Seed Farm. According to this report, an Assam Armed Police patrol party resorted to unprovoked firing at the Nagaland Armed Police post who were strengthening temporary shelter for their personnel to reinforce the post in the Velluguri area.

10.45 There are thus four different accounts available in the documents filed by the Nagaland authorities themselves. In argument, as has been already stated, the Counsel for Nagaland has opted for Shri Wati's account viz. the bogging down of a Bedford truck, Nagaland Armed Police personnel coming to the aid of this truck from the nearby hillock, and being fired

upon by an Assam Armed Police patrolling party. It has been suggested that the fact that there are some discrepancies in the different statements is not a sufficient reason for discarding Shri Wati's evidence. The authors of the other statements, according to Nagaland, were not called as witness, their statements were not tested by cross-examination to ascertain whether they were eye-witnesses or on what basis the statements were made. In the circumstances the statements of the other persons should not weight against the evidence of Shri Wati who was in charge of the Nagaland Armed Police Force at Merapani on 4-6-85 and who was actually in Merapani when the fighting started.

10.46 It is not clear what exactly Counsel for Nagaland has in mind in referring to statements by other witnesses here who possibly are witnesses from the Nagaland side and not the Assam side. Shri Jakhali, Commissioner, Nagaland, had appeared before the Commission and tendered oral evidence. The other accounts are contained in reports prepared by Shri Jakhali and Shri Aliba and are not based on any statements made by the witnesses. Secondly, as far as the value of evidence coming from the Nagaland sides goes, it would appear to be no better than what is coming from the Assam side. It is true that Shri Wati was present at Merapani but he was not an eye-witness to the first shot that was fired. His statements are also based on reports that he might have received. Therefore, as far as the Nagaland case based on averments and statements and other evidence supporting this line is concerned, it rests on the same type of evidence as that of Assam. In other words, there are only bare statements made by both sides as to how the fighting started.

10.47 In this background, one would have to fall back on other evidence that might be available. It has already been shown that there are different versions given by the Nagaland authorities as to how the fighting started. The discrepancies in themselves might be small but still they do give rise to some doubt as to what actually happened. And, the discrepancies between Shri Wati's account on the one side about the Bedford truck and the other account, is not all that small. Similarly, there is a totally different account which does not speak of supply of rations but some work being done on accommodation required for reinforcements at the Government Seed Farm. No evidence has come before the Commission as to how effectively the agreement between the two Deputy Inspectors General of Police of the 30th May, 1985 was being implemented. According to this agreement armed police forces from both sides were to remain within barracks and patrolling was to be done by the Central force. In the absence of any evidence to the contrary the Commission would assume that by and large the agreement was duly implemented. One wonders, therefore, how an Assam Armed Police patrol could have been out near the Velluguri Seed Farm.

10.48 Together with the doubt cast by these differing versions, one can go into circumstantial evidence S/142 HA/87-16

which might show as to who in all probability precipitated the fighting.

10.49 It has come in evidence that at the 28th May, 1985, meeting, taken by the Chief Secretary Nagaland, the report of Deputy Commissioner (Wokha) along with some other reports was considered. The meeting had decided on sending sizeable reinforcements to the Merapani area under the command of the Deputy Inspector General of Police, Nagaland Armed Police, as a counter to the action taken by Assam in establishing the Forest Check Gate and inducting heavy Armed Police reinforcements in the area. In spite of the directions of this Commission, followed up by reminders, the Nagaland Government have not produced the Deputy Commissioner's report which was considered by this meeting or any other reports taken into account. The Commission is, therefore, compelled to assume that this report of the Deputy Commissioner would be substantially on the same lines as the views very often expressed by him in different messages to the Commissioner and his Government, a number of which are available in the documents filed by the Nagaland side.

10.50 Deputy Commissioner (Wokha) is on record as suggesting to his Government the removal of obstruction provided by the so-called Forest Check Gate if it came to that, by force. This would lend strong support to the assumption that the Nagaland authorities had generally decided that they would not under any circumstances tolerate the continuance of this Forest Check Gate on the Wokha-Golaghat road. And that if the matter could not be sorted out at the Chumukedima meeting with the Assam Government agreeing to the removal of the Check Gate, they would be free to take whatever action they thought fit in the circumstances. This assumption receives further support from the statement made by Shri Jakhali, Commissioner, Nagaland, in his affidavit where he says:—

"I sincerely believe that if a decision on the point raised by me in the meeting on 3rd June, 1985 would have been taken on 3rd June itself or even on 4th June in the presence of Shri S. R. Arya, representative from the Home Ministry, the unfortunate conflict could have been averted."

In his cross-examination by the Commission Shri Jakhali said :—

".....that it was my earnest and sincere belief that if a decision on the point raised by me had been taken the unfortunate armed conflict could have been averted. I mean that if the FCG had been removed either on 3rd June or even in the afternoon of 4th June, the armed conflict between the two police forces would have not occurred."

10.51 Shri Jakhali also said in his cross-examination that the Assam representatives agreeing to suspend operation of Forest Check Gate on the 4th June was too late; fighting had already started and it was

only after they learnt of the fighting that had started that they agreed to this.

10.52 In the same report of Shri Jakhalu, Commissioner, Nagaland, available in file No. CCB/3/82-Vol.I submitted by him on the Merapani incident on the 4th June he observes as follows:—

“On 4th June, 1985, the Central Observer Shri S. R. Arya arrived and the discussion regarding Merapani situation was continued in his presence. The Nagaland team pressed for removal or even suspension of the operation of the said Check Gate for immediate defusion of the situation. Assam team was not prepared to remove or suspension the operation of the Check Gate and the discussion lingered on till 5.30 PM or so. Before the meeting could be concluded, the teams were informed around 5.00 PM that exchange of fire has already started in Merapani sector but no details were known at that time.....”.

10.53 From these statements and reports it is clear that the Nagaland authorities quite clearly felt that if the Forest Check Gate had been removed or its operation suspended even as late as on the afternoon of the 4th June, the unfortunate armed conflict could have been avoided. One would ask how they are in a position to make this categorical statement if the fighting was precipitated by firing by the Assam side. Presumably, even if this Forest Check Gate had been removed or its operation suspended by say about 5.00 PM or so on the 4th June, the actions of the Assam Armed Police in firing at the Nagaland Armed Police could not have been controlled from Chumukedima. It is also significant that the Inspector General of Police, Nagaland Shri K. L. Watts was almost hysterically pleading for the removal of the Forest Check Gate or atleast the temporary suspension of its operation at the Chumukedima meeting. He had gone to the extent of recording a separate note of dissent expressing concern that the Assam side were taking the Merapani situation lightly and not discussing it as an item of top priority. On the Assam side, the assumption again would be that after having taken what they considered was an effective counter to the activities of the Nagaland authorities, they would be sitting pretty and should normally have no reason to precipitate an armed show-down with a party whose movements they had effectively blocked.

10.54 Therefore, all that can be said on this point is that in the totality of circumstances as they prevailed at the time of the Chumukedima meeting, fighting started in all probability on the initiative of Nagaland.

Non-implementation of cease fire of 4th June

10.55 The next question is the crucial cease fire agreement arrived at between the Commissioners at Chumukedima on the 4th June and reasons for its non-implementation. Counsel for Assam has relied upon the evidence of their witnesses S/Shri Pangte, Kharkwal, Sumant and A. K. Palit.

10.56 Shri Pangte in his tour note attached to Annexure A-52 of A-III of his affidavit stated:—

“We resumed meeting on 4-6-85 at 2.45 PM in presence of Shri S. R. Arya, Joint Secretary, Ministry of Home Affairs who had reached on that day. While the discussion was still going on, Inspector General of Police, Nagaland informed us at about 5.00 PM about exchange of fire between the two police forces at Merapani. With the intervention of the Central representative and our strong request the Nagaland side agreed to cease fire at once and revert to position as it obtained on 19th April, 1985 except that the Forest Check Gate would continue but its operation would be suspended for a period of ten days to facilitate disengagement of two police forces. Deputy Inspectors General of Police of both sides made a joint appeal to be conveyed to both sides at Merapani. Deputy Inspector General of Police (Border), Nagaland was asked to come to Merapani through Golaghat but curiously after some discussion amongst themselves they decided to go instead via Kohima, Wokha and Bhandari which would take them five times longer than through Golaghat. The manner of contact with white flag and loud-speakers was also agreed between the two Deputy Inspectors General of Police for effecting disengagement. Deputy Inspector General of Police (Eastern Range), Superintendent of Police, Jorhat, and other officers left for Golaghat and Merapani immediately thereafter, but I with Inspector General of Police (Border) had to stay on till about 7.15 PM for finalising the draft of the agreement. The Inspector General of Police, Nagaland was requested to accompany us to Merapani to jointly supervise the implementation or violation of the cease fire agreement. However, for some reason, he did not accompany us. I reached Golaghat with Inspector General of Police (Border) after 9.00 PM. Message regarding cease fire was conveyed to all Sectors. Deputy Inspector General of Police (Eastern Range) and Superintendent of Police, Jorhat had arrived at Merapani at about 8.00 PM directly from Chumukedima to implement the agreement. They informed all the Border Out Posts to cease fire and accordingly firing was stopped from our side. From 8.00 PM on 4th June, 1985 whole day of 5th June Deputy Inspector General of Police (Eastern Range) and his officers continuously tried to attract the attention of Deputy Inspector General of Police (Border), Nagaland on the other side with the help of white flags and loud-speakers but there was no response from Nagaland side. Rather they continued to fire intermittently on our Border Out Posts. I was at Merapani with Inspector General of Police (Border) from morning of 5th June till 2.45 PM and saw

for myself that there was no response from Nagaland Armed Police side to the peace call of our officers. They observed no cease fire whereas we had stopped firing from the previous night.....”.

10.57 Further, in his wireless message dated 5-6-85 addressed to Commissioner, Nagaland, and copies to Chief Secretary, Assam and Director General of Police, Assam contained in A-III Annexure-38 of his affidavit Shri Pangte stated:—

“Despite the decisions taken yesterday to disengage two state police forces at once there has been massive reinforcement of Nagaland Armed Police posts opposite our Forest Check Gate and since 4 PM yesterday our Forest Check Gate and staff protection party have been brought under heavy firing (.) Firing is continuing from NAP side at Veluguri, Dighalpani, Negheribill also (.) There have been exchange of fire at Merapani quarantine check gate between NAP and Assam police station (.) As agreed DIG Jorhat is at Merapani since 8 PM yesterday and showing white flag but there is no response so far from DIG Nagaland from the other side (.) It is our sincere request that we abide by the agreed decisions in presence of MHA representative and further appeal to you to direct DIG Nagaland to immediately cease fire and meet DIG Jorhat in the manner decided (.) We have instructed our police to cease fire and exercise utmost restraint even under such great provocation (.) Matter extremely grave warranting your immediate attention (.)”

10.58 In another message of 5th June, 1985 Shri Pangte wrote to Chief Secretary, Kohima with endorsement to Chief Secretary, Assam contained at—Annexure A-39 of his affidavit in A-III—which is relevant and is reproduced as under:—

“Kindly permit me to address this Msg to you directly in the interest of saving human lives that are being lost every minute in the present full-fledged armed conflict between NAP and AP along the border particularly in Merapani Sector (.) We have already ordered cease fire to our BOP and there has been no firing from our side since this morning but intermittent firing from NAP side continues (.) DIG (B) Nagaland is yet to respond to repeated flag meeting calls by DIG Jht (.) Loud-speaker calls also have been made to attract attention of DIG (B) Nagaland from with hearing range (.) Meanwhile loss of lives continues (.) In this grave situation although our side has already implemented decisions arrived at between two Commissioners on 4th June 1985 at Chumukedima in presence of MHA representative the other side is yet to order cease fire let alone implementing the decision to restore pre

20th April 1985 position (.) Under these serious constraints I have chosen to address you which may not kly be construed as my impropriety (.)”

10.59 Shri B. D. Kharkwal, Inspector General of Police (Border) Assam has in his oral evidence to say the following on the observance of the cease fire agreement:—

“After the 4th June meeting I went to Merapani on the 5th morning. I found that firing was going on and no cease fire had been effective. This was because the Nagaland side did not abide by the cease fire agreement... It is not a fact that no attempts were made by the Assam side to effect the cease fire or to show white flags etc.....”

10.60 Shri Sumant in his cross-examination referred to the cease fire matter as below :—

“When the meeting was going on the 4th of June the two sides came to know that fighting has started. After the receipt of information of the start of firing initially the IGP NL agreed that the DIG(B) NL and the DIG NAP would go with me to Merapani via Golaghat to bring about a cease fire. The DIG(B), NL raised the objection that he had no wireless set and so would not be able to communicate to his forces. He was then asked to get a wireless set at Chumukedima but he came back and said that it was not available. So after a discussion between DIG, NL—DIG, NAP and IGP, NL separately both DIGs stated that they would come via Wokha and not with me via Golaghat which I had said was the shorter route and we would be able to reach Merapani much quicker. It was not reasonable on the part of DIG(B), NL to have refused to accompany me to Merapani as we could have still tried to bring about a cease fire by other options like use of loud speakers and our own joint presence in the area. We were only told by the IGP, NL that exchange of fire had started between both the forces in the Merapani area; we were not informed of the extent and intensity of the fighting. Fierce exchange of fire was going on between the two sides, it was like a mini war. Even with the extent of fighting that was there on the 4th June night I feel that if we had been together we could have brought about a cease fire by our joint presence and as such it was not reasonable for DIG(B), NL not to have agreed to come with me. I do not agree that it was an absurd suggestion to the DIG(B), NL to go via Golaghat in view of firstly, danger to his life and secondly, difficulty in communication. I do not agree with the evidence at P. 6 of Shri Shurhiu that while the NL side tried to effect the cease fire the Assam side did not. Para 10 of DIG, NAP's affidavit at page 24 in N-IV. I do not agree that it would have

been dangerous to travel via Golaghat since I would have been travelling with them. The VSF was not surrounded from our side by AP instead the AP post at Velluguri was surrounded by the NAP. I do not agree that the NL side made an effort to stop firing. They also did not try to get in touch with officers of the AP. What is stated in paras 11 and 12 of DIG, NAP's statement in N-IV is incorrect."

10.61. Shri A. K. Palit, the then Chief Secretary of Assam in his evidence before the Commission stated :—

".....The decisions taken on the Commissioners level meeting became known to me on the 6th June, 85, but I also learnt that the Nagaland Cabinet had abrogated and nullified the decision of the Commissioners level meeting to effect a cease fire. It appeared to me that perhaps a cease-fire would be effected only after NAP had captured Merapani bazar"

10.62 The Nagaland side has relied on the evidence of Shri K. L. Watts, Inspector General of Police—Shri N. Jakhalu, Commissioner—Shri Sithou, Deputy Inspector General of Police, Nagaland Armed Police—Shri Shurhiu, Ex-Deputy Inspector General of Police (Border) and Shri Longkumer, Chief Secretary to establish their case.

Evidence of Shri K. L. Watts, Inspector General of Police, Nagaland :—

"I was in the meeting when I was informed about the commencement of firing on NAP by Assam police. I think the time was a little past 4.00 PM. My reaction was that we should all go to Merapani from the conference itself. But Shri Arya was to return to Delhi urgently on the 5th. It was then decided that the two DIGs(B) should go. This was agreed upon by both sides. But DIG(B) NL expressed the futility of his going to Merapani as he would not be able to communicate with his NAP from Golaghat side. He suggested he would go via Wokha. I had no alternative but to agree. I accepted the DIG(B)'s judgement. There were only two ways through which DIG(B), NL could have gone to Merapani area. Since he expressed his helplessness to contact NAP from Golaghat side, there was only the second alternative left for going via Wokha. I agreed to that. I was convinced that without means of communications he could not have been able to contact NAP from Golaghat side. He had told me that no wireless set could be managed in the presence of many people. As stated by me I ultimately accepted his going via Wokha. I admit that I did not know which vehicles had Wireless sets other than SP, Kohima

whom I frequently used to contact in connection with law and order and other duties. I made enquiries later and found that DIG(B)'s car should have a wireless set as per records. I submit that Shri Shurhiu has been evading duties."

Evidence of Shri Sithou, Deputy Inspector General of Police, Nagaland Armed Police:—

"I was a party to the decision after firing had broken up that the DIGs should all go to the spot. There was no suggestion that we should all go together. The idea was that we should go and get the firing stopped, and not that we should go together. My endeavour should have been to reach Merapani on the 4th itself. If I had travelled via Golaghat I think I would have reached earlier. When the decision that DIGs of both sides should go to Merapani immediately was taken I was at that time I went to the Wireless Stn for confirmation of the msg about firing having been started. When I came back to the meeting I met DIG, Suman and Shri Shurhiu, DIG(B), NL. They had a joint appeal about stopping firing which I also signed. I did not know about any decision of the DIGs including myself going back immediately. I was only thinking of going back to Merapani.

I did not feel safe to travel back to Mpn with Shri Sumant. Even on my way to attend the meeting I had been stopped at the FCG and this experience had influenced me in this judgement. I cannot say that the same thing would happen if Sumant was with me. It was unthinkable to go to Mpn. via G/Ghat. I did not tell IG, NL that I could not go via G/Ghat. If I had gone with Sumant the purpose of going to Mpn would have been defeated. At the time that the cease fire decision had been taken at the meeting with showing of white flag etc. I had not anticipated that it could be difficult for each side to contact each other. I had no suspicion on Assam officers. If my IG had told me I would have gone with Sumant. I did not at that time suggest to my IG that he should also come to Mpn."

Evidence of Shri Shurhiu, Ex-Deputy Inspector General of Police (Border), Nagaland :—

"It was suggested that myself and DIG(ER) should go to the spot via Golaghat and effect cease fire immediately. I do not remember he (DIG, NAP) being included there. I told them that it is not a practical move because firstly I have seen all the preparation before and it is too risky and secondly, even if I go there chance of contacting the police personnel from NL side did not exist at all. Heavy firing and shelling of two inch mortar by both sides are reported to be on. I

not remember who made the suggestion about our going via Golaghat but IGP Nagaland approved it. I went to Merapani via Wokha. I reached Mpn around 5 AM on 5th. I found that heavy firing and shelling was going on between the two police forces all over the foothill area. We did send a signal jointly signed by DIG(ER), DiG, NAP and myself that firing should be stopped immediately by both sides; from Chumukedima on 4th evening. I cannot say why there was no stoppage of firing by the two sides in spite of the signal. I know that as far as the NL side was concerned the signal was transmitted. The message was sent through by the same channel to both sides to the post Command. On 5th morning on reaching Mpn I tried to effect a cease fire. On arrival I called Mr. Wati to the control room and told him about the decision taken at Chumukedima to effect cease fire at 8 AM that morning. The signal would be raising white flag by both parties and stop firing. I also informed him that he should contact all the posts over RT sets and confirm it to me. This he did. After issuing this instruction I myself alongwith DIG, NAP climbed up to a high ridge where from the whole area is visible. Then about 5 to 10 minutes to 8 AM the ILP check gate building which is about 1½ kms. away from our camp was set ablaze and instead of cease fire intensive firing came from the other side (Assam). Set ablaze must be by Assam police because we had vacated it by the 4th evening and withdrawn. We did not see any white flag from Assam side...."

Evidence of Shri N. Jakhalu, Commissioner, Nagaland :—

"I did not suggest that DIGs of both States should go together to Merapani, nor that they should go separately. Since I was busy with Commissioner, UAD with minutes etc., I did not even know whether the DIGs went separately or together. I have already stated that utmost urgency at the relevant time was to arrange a cease fire between the Assam and Nagaland Police forces and therefore in the midst of the Commissioners meeting the two DIGs were directed to proceed to the place of conflict for arrangement of a cease-fire. I do not agree that if the DIGs of the two States had gone together, they would have been in a better position to bring about a cease fire. Going from their own ends was the practical thing to do. After the conclusion of the meeting on the 4th I left for Kohima in the next morning at about 9 or 10. IGP, NL left for Kohima on the 4th night."

Evidence of Shri Longkumer, Chief Secretary, Nagaland :—

"I first got information from the CM's Secretariat that there had been exchange of fire. It was dark when I got this information. I did not try to talk to our people at Mpn on phone. A meeting was held in the CM's chamber late at night on the 4th. I was present. IGP had also come for a short while. The decision was to send Com and IGP to Mpn via Dimapur and Golaghat to defuse the situation. They were to meet their counter-parts at Golaghat. I was present at the Council of Ministers meeting on the 4th night. It was, in fact, a meeting of Ministers who were available. There was a Council of Ministers meeting on the 5th. In the Council of Ministers meeting held on 5th June, 1985 I suggested to the Ministers for induction of neutral force to Mpn area."

10.63 There are two points which emerge from the statements of the above witnesses :—

- (a) Admittedly, the Deputy Inspector General of Police, Nagaland Armed Police and Deputy Inspector General of Police (Border), Nagaland reached Merapani some time in the morning of 5th June and they declined to go via the shortest route namely, Golaghat and decided to go via Kohima and Wokha three to four times the normal distance to Merapani travelling via Golaghat. Was there any real danger in their going via Golaghat?
- (b) Would there be any difficulty in Deputy Inspector General of Police (Border) Nagaland and Deputy Inspector General of Police, Nagaland Armed Police in contacting their officers and men if they went via Golaghat?

10.64 (a) It has clearly come in evidence that initially the three Deputy Inspectors General of Police, namely; S/Shri Shurhiu, Deputy Inspector General of Police (Border) Nagaland, Sithou, Deputy Inspector General, Nagaland Armed Police and P. V. Sumant, Deputy Inspector General of Police (Eastern Range), Assam were to go to Merapani via the shortest possible route namely via Golagaha. Shri Sumant, for example has said in his evidence that after receipt of information of the start of firing, initially the Inspector General of Police, Nagaland agreed that Deputy Inspector General of Police (Border), Nagaland and Deputy Inspector General of Police, Nagaland Armed Police would go with him to Merapani via Golaghat to bring about a cease-fire. According to Shri Sumant, Deputy Inspector General of Police (Border) Nagaland raised the objection that he had no wireless set so would not be able to communicate with his force. It was only after this and a further discussion between the Nagaland police officers that the two Deputy Inspectors General from Nagaland decided that they would go via Wokha and not via Golaghat.

10.65 The fact that initially the decision was for all of them to go via Golaghat gets support from the evidence tendered by Shri K. L. Watts, Inspector

General of Police, Nagaland. He says that his reaction after hearing about the firing was that they should all go to Merapani but because the Central Observer had to go back to Delhi urgently on the 5th, it was decided that the two Deputy Inspectors General of Police (Border) should go. This was agreed to by both sides. But then Deputy Inspector General of Police (Border), Nagaland, expressed the futility of going from the Golaghat side as he would be unable to communicate with his force. He suggested that he would go via Wokha. Inspector General of Police, Nagaland then had no alternative but to agree. This evidence of Shri Watts makes it quite clear that in the first instance, the decision was that all officers were to go via the shorter route namely; via Golaghat.

10.66 This position is also confirmed by Shri Shurhiu's evidence. He says that Inspector General of Police (Border) Assam suggested that Deputy Inspector General of Police (Eastern Range), Deputy Inspector General of Police (Border) Nagaland and Deputy Inspector General of Police, Nagaland Armed Police should all go together to Merapani and that Inspector General of Police, Nagaland agreed to this. The Central Observer had also according to him wanted all three to go together and in fact, Inspector General of Police, Nagaland was a little annoyed when he and Deputy Inspector General of Police, Nagaland Armed Police declined to go via Golaghat.

10.67 The joint message sent by the Deputy Inspectors General also confirms this. The wording of the joint message was "stop firing at each other immediately repeat immediately. We are coming to Merapani. . . ." While one can at this point of time say that "coming to Merapani" need not necessarily mean coming to Merapani together, the wording of the message in the circumstances at that time would surely suggest that the intention was for all of them to go together.

10.68 It has been contended on behalf of Nagaland that it was absurd to expect the Nagaland police officers to go via Golaghat which was in a sense in the situation then prevailing behind "enemy lines". These officers would have been at great risk if they travelled through Assamese territory while fighting was going on between the two forces and the whole Merapani area was in a state of high emotion and tension. In his evidence Shri Sitlhou, Deputy Inspector General of Police, Nagaland Armed Police also made some reference to this point. He said that he did not feel safe to travel together to Merapani with Shri Sumant. In fact, he considered it unthinkable to go to Merapani via Golaghat.

10.69 It is difficult to accept that the lives of Nagaland officers and particularly very senior police officers would have been in danger if they went via Golaghat. In the first instance, there were no two enemy countries at war. Secondly, they would not have gone alone but with a senior Assam Police Officer, Deputy Inspector General of Police (Eastern Range). Shri Sitlhou has himself acknowledged in his evidence that Shri Sumant, Deputy Inspector General (Eastern Range) is well known to him, is a good friend and

that they had cordial relations. In fact, he went to the extent of saying that their relations were such that if there had been no outside interference, many of the irritants in the relations between the two States at the border could have been sorted out. The evidence of Shri Z. Lotha, Superintendent of Police (Border), Nagaland is also relevant in this connection. He had attended the Chumukedima meeting and in fact going by his evidence, it was he who first received the message about the exchange of fire between the two police forces on the 4th afternoon. He says that he left for Merapani on the 5th afternoon after seeing off various people who had come to attend the meeting. We went to Merapani via Golaghat. He confirmed the fact that it takes about eight hours to go from Chumukedima to Merapani via Wokha while it takes three to four hours via Golaghat. So we have here a Nagaland Police Officer, who goes to Merapani via Golaghat in the thick of battle and yet is not harmed in any manner. He did not obviously, apprehend any threat to his safety going via Golaghat.

10.70 It is not therefore possible to accept that there was apprehension of any real danger on the part of Nagaland officers in their accompanying Deputy Inspector General of Police (Eastern Range) and going via Golaghat to the scene of fighting. It can under the circumstance be reasonably assumed that there was some hesitation on their part—and this would include the Commissioner and Inspector General of Police, Nagaland—in proceeding further in the matter on their own without instructions from their Government.

10.71 (b) The next point is regarding the inability of the Deputy Inspectors General of Police to contact each other and effect a cease-fire after reaching Merapani. Much has been made of the point that the Nagaland Deputy Inspector General of Police's car was not equipped with a W/T set. In evidence it has come out that such VHF sets were in effect not only available but they were installed in the cars belonging to the Deputy Inspector General of Police. Deputy Inspector General of Police (Border) Nagaland, Shri Shurhiu, says in his evidence that the vehicles of Inspector General of Police, Nagaland, Deputy Inspector General of Police (Border), Nagaland and Deputy Inspectors General of Police, Nagaland Armed Police were equipped with VHF sets. And further, he did not remember having so said that communication between him and Merapani station would not be possible. It has also been accepted that the senior officers of the Nagaland Police could contact the various units through these W/T sets. It is not, therefore clear how it is contended that contact with fighting formations would be difficult.

10.72 It has also been argued on behalf of Nagaland that although their Police Officers showed a white flag there was no response from the Assam side. It has not come in evidence on behalf of Nagaland as to who was the Deputy Inspector General of Police or any other Police Officer who showed a white flag and made announcements from his side about implementing the cease-fire which had earlier been agreed

upon. On the other hand, there is the specific evidence of Shri Sumant, Deputy Inspector General of Police (Eastern Range) Assam that he had moved in his vehicle showing the white flag and also made announcements, pleading for the cease-fire and that there was no response from the other side. It is also difficult to accept the stand of the Nagaland side that the Assam armed police had taken over the Nagaland Inner Line Permit Check Gate and burnt it on the morning of the 5th June and this showed that they were not interested in implementing the cease-fire. On their own showing, Nagaland have said that they had vacated the Inner Line Permit Check Gate by the night of the 4th June. There is also no evidence that this Check Gate had been set on fire by the Assam side except the bare statement to that effect made by the Nagaland authorities. All this apart, however, surely a decision taken at the level of Commissioner or Inspector General of Police cannot be discarded on any perceived lack of bonafides at the lower formation levels etc. The question here was of implementing a cease-fire which had been decided upon at a high-level meeting on the 4th June at Chumukedima. If the implementing officers felt that there was some lack of sincerity on the other side they should surely have sought instructions from their superiors.

10.73 The anxiety of the Assam side to effect the cease-fire is also clear from the frantic wireless messages from the Commissioner, Upper Assam Division, Assam, of 5th June to the Chief Secretary, Nagaland where he had requested him to intervene and effect a cease-fire to save further loss of human life and property. There was apparently no response from the Nagaland side. Even otherwise, considering the advantageous position the Nagaland Armed Police had come to be placed in by the 5th June morning, it would be reasonable to expect that Assam would be only too keen for a cease-fire—and not the other way around. In fact, this disinclination to implement the cease-fire can be better seen in the Nagaland Chief Secretary's message at—Annexure C 54 of A-II—in which the Nagaland Cabinet disown or rather invalidate the decisions taken at Commissioner's-level meeting on the 4th of June regarding the cease-fire and withdrawing to the pre-20th April positions.

10.74 In these circumstances it seems to be a reasonable proposition that the cease-fire agreement was not implemented because of a lack of willingness on the part of the Nagaland Officers. This in turn would appear to have been dictated by decisions taken at the Government level at Kohima.

The Central Representative

10.75 The Commission would like to mention here that because of differing versions of the two sides on certain issues which came up at the 4th June meeting at Chumukedima, it was considered appropriate to have the evidence of the Central Observer who attended this meeting on behalf of the Government of India. For example, there is the question whether wireless sets were available at Chumukedima for the Nagaland police officers to establish contact with their

forces at Merapani or whether such a set was fitted in the car of Deputy Inspector General of Police (Border), Nagaland. There is also the question whether the first decision at the meeting following news of the outbreak of the fighting was that the Deputy Inspectors General of Police of the two States should go to the scene of fighting together via Golaghat. The evidence of an independent witness on these points would be useful to the Commission in its considering the various points involved.

10.76 As has been briefly mentioned earlier, following the serious incident on the borders of the two States on 5th January 1979, it was decided at a meeting taken by the Union Home Minister on the 13th April 1979, and attended by the two Chief Ministers that a senior officer from the Centre would be deputed to the area to remain in touch with local officers of the two State Governments and help in sorting out any problems that might arise. It was a result of this decision that a Joint Secretary from the Ministry of Home Affairs attended a large number of Commissioner-level meetings that were held between the two States from 1979 to about 1982. In fact, he was also present at some Chief Secretary level meetings. From the information made available to the Commission it seems that thereafter this attendance by a Central representative fell off and in fact the Commissioner-level meetings themselves became rather infrequent. It was only on this present occasion with the problem that had arisen at Merapani in April-May 1985 that it was felt that the Commissioner-level meeting should be held and be attended by a Central representative.

10.77 There is no evidence before the Commission as to what was the exact role of the Central representative at these Commissioner-level meetings. All that the Commission can, therefore, go by is the decision of the Union Home Minister and the Chief Ministers, mentioned above and reproduced below :—

“That a senior officer from the Centre would be deputed to this area to remain in touch with the local officers of the two State Governments and help in sorting out any problem that may arise.”

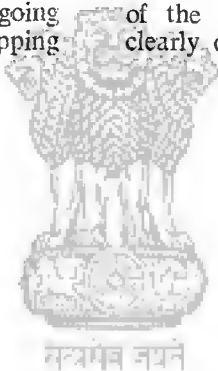
10.78 The term “deputed to the area” is unclear and one is not sure whether this meant the posting of a senior officer from the Centre in the area or his attending various meetings. In any case it seems to have been accepted that it would be the latter arrangement that would prevail. Further, his role was to remain in touch with local officers of the two State Governments (institutionalised through Commissioner-level meetings) and help in sorting out any problem that might arise. This means that his role would be somewhat more than that of a mere observer. If one goes by the evidence in particular of Shri A. K. Palit who was Chief Secretary at the relevant time, it would appear that quite a purposeful role was played by the Central Observer in various Commissioner-level meetings which Shri Palit as a Divisional Commissioner had attended. According to him a number of issues were sorted out by the Central Observer.

10.79 Although the intention of the Commission was to get independent evidence from the Central representative, the two State Governments made his presence before the Commission an occasion to make some critical comments on firstly, the rather casual attitude of the Central Government about the need for a quick meeting and then deputing a Central representative who did not deal with the subject matter of the meeting; and secondly, the contributions made by the Central representative who did attend, to the meeting itself. Both sides say that the Central Government was well aware of the continuing problems between the two States on the border and the serious incidents which had taken place in the past and should have shown a sense of greater urgency. If the meeting had been held earlier and a more effective role played by the Central Observer, the conflict that occurred might have been avoided.

10.80 Unfortunately, the Central Observer Shri S. R. Arya was unable to give his own account of what actually transpired at the 4th June meeting, about the route to be taken by the Deputy Inspectors General of Police; availability of wireless sets etc. He stated that he was not aware as to what arrangements were made by the State Government officers for going or sending officers to the Merapani area for stopping

firing there. He was not aware as to what was decided by the civil and police officers as to who should go to Merapani, the route that they should take and the further point whether one or both the parties did not have a sufficient number of wireless sets and the further fact of somebody suggesting going via Golaghat etc. As to the effectiveness of his presence at Chumukedima on the 4th and 5th June morning, he says that he did not make any attempt to know as to what was the follow-up action after the meeting as no officer either from the Assam side or the Nagaland side was available to him in the night. He did not try to contact the Government of India. He did not try to ascertain whether the cease-fire had taken place in the morning before leaving for Delhi.

10.81 As has been pointed out earlier the Central Government cannot act as a nurse-maid to the States, to sort out problems which essentially concern them. The Government of India would have no formal role as such in settling any problem of a law and order nature etc. arising on the borders of the two States. At the same time, it must be recognised that the Government of India had been playing a certain role at these Commissioner-level meetings. It will be desirable therefore that the exact functions and status of the Central representative at these meetings are clearly defined and understood by all concerned.



CHAPTER XI

THE ROLE OF THE AUTHORITIES IN BOTH THE STATES IN MOBILISING AND DEPLOYING ARMED POLICE FORCES INCLUDING VILLAGE GUARDS OF NAGALAND

The third term of reference of the Commission reads as follows:

“The role of the authorities in both the States in mobilising and deploying Armed Police Forces including Village Guards of Nagaland.”

11.1 In order to deal with this term of reference, it is necessary to discuss in brief the situation prevailing prior to the incidents of April—June 1985 culminating in the armed clash between the two State Police Forces. For this purpose, the state of mobilisation and deployment of armed police forces is grouped into three phases, namely:—

11.2 Phase I: The existence of armed police forces in the Doyang Reserved Forest particularly in Merapani (D Sector) as on 2nd May, 1972 when the relevant interim agreement was signed between the State Governments of Assam and Nagaland;

11.3 Phase II: The strengthening of the armed police posts and establishment of new armed police posts during the period May 1972 to March 1985; and

11.4 Phase III: Mobilising and deployment of armed police forces in Merapani (D Sector) during the period April—June 1985 including the Village Guards of Nagaland.

11.5 PHASE I

The Assam Government has stated before the Commission that soon after the attainment of Statehood by Nagaland in 1963, frivolous and exaggerated claims on the territory of Assam in their reserved forests were put forth by the Government of Nagaland. These claims were unconstitutional as had been indicated to the Nagaland Government in unequivocal terms by the Government of India wherein they were advised that any alteration in the boundary of the two States or territorial adjustments would have to be done in accordance with the provisions of Articles 3 and 4 of the Constitution of India. However, Nagaland continued to persist in their claims and, surreptitiously as well as openly, encouraged the Naga elements to forcibly occupy lands in the reserved forests belonging to Assamese inhabitants with the full backing of their armed police force. This resulted in a lot of distrust between the State Governments of Assam and Nagaland and as a result several incidents of armed clashes occurred between the inhabitants i.e. Nagas and non-Nagas.

11.6 The Nagaland Government, on the other hand, denied all these allegations as prevarications of the Assam Government deliberately created with a

view to ignore the claims of the Nagaland Government to the areas which rightfully and traditionally belonged to them.

11.7 As noted earlier, as a result of the unhappy situation prevailing between the two States, the Government of India deputed Shri K.V.K. Sundaram, a former Secretary in the Government of India, to study the border problem between the two States and make recommendations. Pending his recommendations on the boundary problem, four Interim Agreements were negotiated between Assam and Nagaland.

11.8 One of the interim agreements related to the Doyang Reserved Forest covering Merapani (D Sector) and was signed on 2nd May 1972 between the State Governments of Assam and Nagaland. Some of its provisions have already been discussed in Chapter IV. The agreement, as far as it relates to the continuance or otherwise of armed police posts, provided as follows:—

- (i) The two State Governments agreed to withdraw within one week from the date of the agreement, all their armed police posts set up at or near the border between the two States from Disoi river to Gororjan stream and from Kakadanga river to Doyang river whether within or without the reserve forests adjoining that border;
- (ii) The two Governments agreed not to set up any armed police post within the said reserved forest or within a belt on the said border areas to be determined by the Inspectors Generals of Police of the two States

11.9 As on the date of agreement, the Assam Government was admittedly maintaining the following five Armed Police Posts in the Merapani area in 'D' Sector:

- (i) Merapani BOP (Rear) — 1 Pltn. AP Bn.
- (ii) Merapani outpost near Merapani bazar — 1 Pltn.
- (iii) Velluguri BOP — 1 Pltn.
- (iv) Dighalpani BOP — $\frac{1}{2}$ Pltn.
- (v) Sishupani BOP — $\frac{1}{2}$ Pltn.

11.10 The Government of Nagaland had four institutions/establishments in the Merapani area viz:

- (i) Civil Police Check Post;
- (ii) Veterinary Quarantine Check Post;
- (iii) Government Medium Seed Farm;
- (iv) 1st Nagaland Armed Police Post near Merapani bazar

The deployment of the Nagaland Armed Police Forces was as under:—

- (i) One Company of Nagaland Armed Police was deployed at the 4th Company Headquarters of Nagaland Armed Police at the foothills.
- (ii) One Company at the Nagaland Velluguri Government Seed Farm.
- (iii) One Company at the new Merapani bazar area beyond the Inner Line Permit Check Gate.

11.11 On the signing of the Interim Agreement on 2nd May 1972 and in consonance with Clauses (i) and (ii) referred to above, Nagaland has claimed that the aforesaid Nagaland Armed Police posts at (i), (ii) and (iii) above were withdrawn and no new Nagaland Armed Police post was established in the area till March 1979.

11.12 On the other hand, the Assam side has stated that it continued to keep its Border outposts with limited armed police support at the above five places with a view to infuse a sense of security among the inhabitants of the area and for maintaining peace and tranquillity which was constantly disturbed by the Naga elements aided and abetted by the Nagaland Armed Police. This, therefore, did constitute violation of the Interim Agreement which Assam calls a 'technical' violation.

PHASE II

11.13 During the period between 1972 and March 1985, certain developments took place along the border areas of Assam and Nagaland which had their impact on the Merapani Sector also. For purposes of convenience, this period can be sub-divided into two parts, viz.—

- (a) The period between May 1972 and December 1978

and

- (b) the period between January 1979 and March 1985.

11.14 (a) The period between May 1972 and December 1978 remained relatively calm and no serious law and order incident took place in the "disputed areas". Some minor incidents of encroachment harassment, forcible occupation and looting of crops arrest and intimidation of Nagas and non-Nagas did take place. These problems were settled by mutual discussions at the level of the Deputy Commissioners, Commissioners and the Inspectors General of Police. During this period, it would appear that four important meetings were held between the Commissioners, Chief Secretaries of the two State Governments and Inspectors General of Police. It is worthwhile to note some of the important observations made and decisions taken in these meetings and which have a bearing on the subsequent course of events.

11.15. In the meeting held between the Commissioners of Assam and Nagaland on the 13th July, 1976

at Jorhat (pp. 13—15 of A-VIII), to discuss the border problems, it was decided as under:—

Law and Order

- (i) "The law and order situation along the boundary was discussed and it was agreed that if an offence was committed by persons either from Nagaland or Assam in the other side of boundary, action as per law should be taken and should be informed to the respective authorities.
- (ii) It was further agreed that except in cases of serious offences, dropping of cases instituted against officers and others on either side should be considered.

It was also agreed that difficulties in investigation of crime should be sorted out by the police officers of either side as and when they arise."

11.16 In the meeting of the Chief Secretaries of the Governments of Assam and Nagaland held at Kohima on 24-6-1977 (p. 16 of A-VII), the Chief Secretary of Assam, stated:

"While the Government of Assam would continue to abide in letter and spirit by the terms of the interim agreement, it is prudent for both parties to recognise that abiding by the provisions of these can only be upto a point, especially when the status quo tends to be altered because of encroachments or other action taken by one party or the other. He said that the interim agreements were entered into some time ago and if it became necessary, the provisions of the agreements may have to be reviewed so that the situation does not worsen further."

11.17 It was mentioned by Nagaland officials that seven Assam Police posts within or near the border which were required to be vacated by the Assam Police under the Interim Agreement had not been removed by the Assam Police. The Chief Secretary, Assam, agreed that he would review such cases and, if any border post had to be removed under the terms of the Interim Agreement, necessary action will be taken.

11.18 On the complaint from the Assam officials that the Nagaland and Police Check Post located in disputed areas prevented Assam officials from proceeding or crossing the Check Post in discharging their official duties, it was decided that officials of both the Governments should carry identity cards which should be honoured by the Check Posts of either side.

11.19 Meeting of the Inspectors General of Police Nagaland and Assam held at Kohima on 25th March, 1976 (p. 25 of A-VII) decided as under:—

"The Inspector General of Police, Nagaland, mentioned that there is no Nagaland Armed Police post now existed in the disputed area. The Inspector General of Police,

Assam said that there is no Assam Armed Police post now in the disputed area. It was therefore, agreed that no armed police posts on either side needs to be immediately withdrawn. It was also agreed that wireless link between Wokha and Jorhat would be expedited."

11.20 To give an idea of the rather relaxed relations between the State officers, it is necessary to quote, in brief, the circular dated 27th March, 1976 (pp. 28-29 of A-VII), issued by Shri Shiv Swarup, Inspector General of Police, Nagaland:—

"It is essential that the Police of Nagaland and Assam maintain the best possible relations and also at the same time take all action against insurgents and criminals who may be operating with impunity taking advantage of the border areas. For this, it is felt essential that there should be complete co-operation and coordination between the border outposts as well as the civil police operating in the border area.....

In case operations have to be undertaken in disputed territories it may be worthwhile to take up the operations in cooperation and coordination with the local police of both the States. It is appreciated that in some cases this may not be possible if the operations are being undertaken on receipt of some urgent information and or in hot pursuit but in that case it would certainly be worthwhile to keep the police of both the States informed as soon as the operations are completed or as soon as arrests etc. have been made. This would ensure that there are no complications at a later stage. It should be possible for the police of both the States to carry out a joint interrogation if necessary. In case making of any arrest or carrying out any combing operation is not of very immediate urgency it would certainly be desirable to carry out the operations in consultations and coordination with the police of the other State."

11.21 From these observations made and decisions taken by senior officers of the two State Governments it is evident that the border areas particularly Merapani 'D' Sector remained without any serious incident and a spirit of cooperation and understanding prevailed between the two sides. No significant armed build-up took place during this period on either side;

11.22.(b) During the period, January 1979 to March 1985, there was a marked development in the mobilisation and deployment of armed police forces by both the sides, more specially on the Assam side, in the wake of the 5th January, 1979, incident when 60 Assamese settlers were killed in the Diphu, Rangma and Nambor South reserved forest areas (these reserved forests are not covered by the Interim Agreements). The Assam Government stated that they had to strengthen security measures in order to protect the life and property of the inhabitants in these areas, and to prevent further encroachment in the areas by

Nagas. They strongly protested against the connivance of the Nagaland Government in establishing 21 villages in Diphu reserved forest, 17 in Nambor reserved forest and 13 in the Rengma reserved forest by the Nagaland encroachers.

11.23 The Nagaland side claimed that taking shelter behind the unfortunate incident of 5th January 1979, the Assam Government had committed more provocative acts in the Doyang reserved forest areas also, as would be evident from the following:—

- (i) In 1979, one Assam Police Check Gate was opened at Dighalpani on the Merapani-uraimghat road near Merapani.
- (ii) On 13th August 1981, the Central Reserve Police Force posts at Merapani|Harupani were replaced by Assam Armed Police of the 10th Battalion.
- (iii) In November 1981, the Assam Police opened a Check Gate at Velluguri along with a post about 5 kms from the Merapani Check Gate.
- (iv) On 3rd January 1982, the Assam Armed Police erected one Check Gate right in front of the Inner Line Permit Check Gate at Merapani at a distance of 30 yards.
- (v) On 23rd July, 1983, the office of the Officer-in-Charge, Police Station, Merapani on the Assam side was shifted to a place just opposite to the Nagaland Inner Line Permit Check Gate at Merapani. This Police Station also housed an Assam Armed Police post thereby making it a combination of a regular Police Station and Border Outpost. The defence earth wall, fencing and bunkers were built all around the compound.

11.24 The Nagaland Government further alleged that the officers of the Assam Government caused obstruction to the free movement of their officials and harassed them in not allowing them to reach their Velluguri Farm. Harassment was also caused by Assam officials in arresting certain Nagas from the Merapani area on flimsy grounds and there was forcible occupation of land belonging to Nagas in this area.

11.25 On the other hand, the Assam Government accused the Nagaland authorities of building up their armed police in the Merapani area by establishing a strong Nagaland Armed Police Post at the Velluguri Seed Farm and Nagaland Armed Police Company Headquarters at the foothills thereby causing panic among the non-Naga inhabitants.

11.26 In view of the deteriorating situation in the reserved forest areas, particularly in the Doyang reserved forest, and more particularly after the 5th January 79 incident, as briefly mentioned earlier, the Union Home Minister held a meeting of the Chief Ministers of Assam and Nagaland at New Delhi on 11th April 1979. In this meeting a decision was taken to strengthen the joint operational control of Central Reserved Police Force, Assam Rifles, Assam Armed Police, and Nagaland Armed Police under the overall

command of Additional Inspector General of Police of Assam assisted and advised by Deputy Inspector General (Eastern Range) Assam and Deputy Inspector General (Border) Nagaland. It was also decided that both the State Governments would hold frequent meetings at the level of Commissioners and Chief Secretaries to sort out issues arising in the border areas. A Central Observer, Shri K.M.L. Chhabra, was also deputed by the Home Ministry to be present in the meetings.

11.27 In accordance with the aforesaid decisions, a number of meetings were held at the level of Commissioners and Chief Secretaries of the two State Governments in the presence of Central Observer. These meetings were quite helpful in restoring mutual confidence, trust and understanding between the two States and removing irritants like illegal encroachments, construction of roads, illegal arrest and harassment etc. The joint visits of the Deputy Commissioners, Commissioners and other senior police officers proved useful in reducing tension, generating a sense of security among the people and restoration of peace in the area.

11.28 PHASE III

The period from April to June 1985 marks the watershed of a series of incidents relating to the mobilising and deploying of armed police forces of both the States ultimately leading to the armed conflict in the first week of June 1985. These incidents have been discussed at length and are again briefly mentioned below :

11.29 20th April, 1985 Incident

On 20th April 1985 another attempt was made by the Wokha Administration of Nagaland to start fencing of the Inner Line Permit Check Gate area. The Assam Police Station in pursuance of an FIR lodged by one Puram Kachari, seized the fencing material from the Inner Line Permit Check Gate. Agitated by this so-called high-handed action of the Assam police officers, a contingent of Nagaland Armed Police moved from the foothills and positioned themselves at the Inner Line Permit Check Gate. This was under the tacit approval of D.C. (Wokha). This was beginning of the building up of armed police strength in the Merapani area by the Nagaland and by Assam.

11.30 22nd April, 1985 Incident

Within two days of the 20th April, 1985, Shri Lal'hara, Deputy Commissioner, Wokha made an un-scheduled visit to the Assam Merapani Police Station on 22nd April 1985 accompanied by a few civil and police officers under cover of Nagaland Armed Police. According to Nagaland, Deputy Commissioner, Wokha made this visit in order to enquire as to how the fencing material were seized and where were these materials kept. The Assam side alleged that Deputy Commissioner, Wokha with a horde of officers visited the Police Station in order to overawe the petty police officers with a view to take away forcibly the seized fencing material. It

was during this visit of the Deputy Commissioner, Wokha that a firing incident took place which complicated the whole situation. While Deputy Commissioner, Wokha blamed that one Mukund Baruah had tried to fire at him from a distance of 15 feet from his sten gun which narrowly missed him, the Assam officers while denying this allegation, described the firing as an accidental one when their police officials at the Police Station were in a 'Stand to' position in order to pay compliments to the high officers of Nagaland.

The firing incident had far reaching implications as has been described in detail in the earlier Chapter. The immediate repercussion following this incident was that Deputy Commissioner, Wokha left behind a platoon of Nagaland Armed Police to be stationed at the Inner Line Permit Check Gate. The Assam side also reacted in a similar vein by deploying an additional contingent of an Assam Armed Police at their Police Station. So, for the first time, the Nagaland Armed Police and the Assam Armed Police came face to face with each other at their respective locations of the Inner Line Permit Check Gate and the Police Station. It is from here onwards that mobilisation and deployment of armed police forces of the both sides began to assume alarming proportions. It became a prestige issue that withdrawal of the armed police would be only under certain conditions thereby leading to a further build-up and ultimately ending in the armed conflict.

11.31 1st May 1985 Agreement

Sensing the trouble which was brewing following the 20th April and 22nd April incidents at Merapani, Inspector General of Police (Border) Assam had a meeting on 1st May 1985 with Deputy Inspector General of Police (Eastern Range) Assam and Deputy Inspector General of Police (Border) Nagaland, wherein an agreement was arrived at for withdrawal of armed police forces from the Merapani area. This agreement has been dealt with in detail in Chapter VII.

11.32 The Commission has already noted that the implementation of the agreement was frustrated because of Deputy Commissioner, Wokha who with the tacit support of the political set up was continuously flouting the orders and authority of his superiors. Deputy Commissioner, Wokha, Shri Lal'hara not only stalled the implementation of the 1st May Agreement for withdrawal of Nagaland Armed Police as ordered by his Commissioner in his instructions contained in the messages of 26th April 1985 (N 13) and 7th May 1985 (Commission Exhibit No. XXVI), but also moved in the opposite direction by completing the fencing on the northern side of Inner Line Permit by the middle of May 1985. Assam began to feel that no useful purpose would be served in insisting on the implementation of 1st May Agreement through the district authorities of Wokha. This was evident from the lack of response to a reasonable proposal made by the Commissioner, Nagaland, Shri N. Jakhlu contained in his message of 7th May to Shri Muhuri, Commissioner, Upper Assam Division,

Assam in which the former had proposed simultaneous withdrawal of armed police forces, delinking the issue of withdrawal of the Merapani Police Station which could be discussed at the meeting of the Commissioners later.

11.33 The situation that emerged by the middle of May 1985 regarding mobilising and deployment of armed police forces in Merapani area is evident from the following information furnished by the two State Governments to the Commission :—

Assam side :

Place	Strength
Merapani Police Station	One Platoon Assam Police Battalion. Two Platoons CRPF (for law and order duties—patrolling Merapani border).
Vellaguri Border Outpost	One Platoon Assam Police Battalion.
Dighalpani Border Outpost.	Half Platoon Assam Police Battalion.
Sishupani Border Outpost	Half Platoon Assam Police Battalion.
Odalipathar Border Outpost.	One Platoon CRPF.
Harupani Border Outpost	One Platoon CRPF.
Merapani Rear Border Outpost.	One Platoon Assam Police Battalion.

Nagaland side :

Place	Strength
Merapani Foothills	Headquarters Company— 1 Gazetted Officer and 146 Others.
Government Seed Farm	1 Non-gazetted Officer and 25 Others.
Inner Line Permit Check Gate.	1 Non-gazetted Officer and 25 Others.
Champang	1 Non-gazetted Officer and 25 Others.

11.34 The above statements clearly indicate the situation as it prevailed in the Merapani area by the middle of May 1985. The issue of withdrawal of the armed police forces in pursuance of the 1st May Agreement was, therefore, given a go by and both sides now vied with each other with a sizeable presence of their armed police forces in clear violation of the Interim Agreement of 2nd May 1985.

11.35. Subsequent events moved fast. A lot of tension had been built up by the presence of the armed police forces of the two States in the Merapani area. Local inhabitants became panicky. The then Chief Secretary, Assam, Shri A. K. Palit, accompanied by Commissioner (Upppr Assam Division) Assam and Inspector General of Police (Border) Assam made an extensive tour of the border areas and also visited Merapani on the 13th May 1985. He was presented with a memorandum from the local people requesting for reinforcement of the armed police for protection of their lives and property. He submitted his tour note of 20th May 1985 to the Chief Minister which has already been referred to in detail in Chapter VIII. In this note the Chief Secretary pointed out that the situation at Merapani had deteriorated very fast after the incident of 22nd April and also upon construction of permanent fencing all around the Check Gate at Merapani by the Nagaland authorities. He mentioned that Deputy Commissioner, Wokha was very un-cooperative and aggressive. He also reported that villagers of Merapani had complained to him that about 250 or so Nagaland people had come down from the foothills to the Merapani bazar and had driven away 240 heads of cattle and they were highly apprehensive of some kind of Nagaland raid in Doyang reserved forest to drive them out. The Chief Secretary felt the necessity of sending additional police force to Merapani to generate a feeling of confidence among the villagers from Assam. The Chief Minister agreed with him that some police force should be sent to Merapani. There was also a proposal from the State Forest Minister contained in his note of 18th May 1985 in which he had made recommendation to the Chief Minister for setting up a Forest Check Gate in Merapani which would be a counter-point for negotiation with the Nagaland authorities for withdrawal of their armed police from Merapani area. The result of all this, as has been seen earlier was firstly, the Forest Check Gate at Merapani with 3 companies of Armed Police by Assam about the 26th—28th May and then induction of Nagaland Armed Police in equal strength by Nagaland about the 29th May.

11.36 Consequent upon the decision taken by the Chief Secretary, Assam and Chief Secretary, Nagaland, as described above, a massive build up of armed forces took place in the Merapani area. The following statement would show the deployment of armed police units by the two States as it existed on 4th June till the 6th June 1985 in the Merapani area:—

Assam Armed Police :

Place	Strength
Merapani Police Station	2 Platoons 3rd Assam Police Battalion. 1 Platoon CRPF (But withdrawn and not involved).
Forest Check Gate	4 Platoons 1st Assam Police Battalion.

1	2
Velluguri Border Outpost	2 Platoons 3rd Assam Police Battalion. 1 Platoon 11th Assam Police Battalion.
Sishupani Border Outpost	2 Platoons 3rd Assam Police Battalion.
Dighalpani Border Outpost	2 Platoons 1st Assam Police Battalion.
Merapani Border Outpost	2 Platoons 1st Assam Police Battalion. 2 Platoons 11th Assam Police Battalion. 3 Platoons 1st Assam Police Task Force.

As on 6-6-85, in addition to above, 19 Platoons of Assam Police Battalions reached Merapani area as reinforcement from the morning of 5th June till mid-day of 6th June. Out of this total force, only 15 Platoons were available at 10.00 A.M. of 6th June, the rest having fled away.

Strength of Nagaland Armed Police as on 29-5-85:—

Nagaland Armed Police :

4th Nagaland Armed Police.	— 1 Company Headquarters in the foothills.
5th Nagaland Armed Police.	— 1 Company (Moved on 29-5-85 as reinforcement).
3rd Nagaland Armed Police.	— 1 Company (Moved on 29-5-85 as reinforcement).
1st Nagaland Armed Police.	— 2 Platoons (Moved on 29-5-85 as reinforcement).
Total	3 Companies plus 2 Platoons.

After 4-6-85 :

1st Nagaland Armed Police.	— 1 Platoon
Nagaland Armed Police Training Centre.	— 1 Platoon
3rd Nagaland Armed Police.	— 1 Company
4th Nagaland Armed Police.	— 1 Company plus 1 Platoon.
Total	— 3 Companies
Grand Total	— 6 Companies and 2 Platoons.

11.37 The actual deployment of Nagaland Armed Police has not been made clear from the monthly returns of deployment filed by the Government of

Nagaland before the Commission. There is, however, the statement made by Shri Sithou in his affidavit which throws light on the actual deployment of Nagaland Armed Police inducted after 28th May and before the start of the armed conflict. Shri Sithou stated in his affidavit as follows :—

“When I reached ILF Check Gate, I called on the Deputy S.P. in charge of the Assam Police at the Police Station at Merapani and explained to him the need to maintain peace and harmony between the two contending forces. He explained his helplessness in the matter, as according to him, he had to obey orders from his higher authority. I noticed that the Assam Police had made and was still making massive preparation by making bunkers, digging trenches etc., by employing hundreds of Assam civilians. After reviewing the situation on 29th May, 1985, evening the forces available in the Company Headquarters at Merapani were deployed in three places in the nearby hills, one on the east overlooking the Nagaland Check Gate, another overlooking the NAP post at the Nagaland Government Seed Farm and the third at a place overlooking the Village Development road which was the only communication left between the NAP post at Velluguri and NAP Company Headquarters at Merapani.”

11.38 The above statement indicates the deployment of 3 Companies of Nagaland Armed Police on 29-5-85. Three more Companies of Nagaland Armed Police were sent to Merapani after the conflict had started on 4-6-85 but their actual deployment has not been indicated clearly in the monthly deployment returns filed by Nagaland Police Headquarters.

11.39 The state of mobilising and deployment of armed police forces by the two State Governments in Merapani sector presented a picture of battle-line formations which is exhibited only by countries at war. The situation thus created was of such a grim nature that any spark could trigger off armed conflict which is what happened within the next three or four days—the two States seem to have reached a point of no return.

11.40 In this whole episode of mobilising of the armed police forces by the two States, there were certain authorities on both the sides who were directly or indirectly responsible for bringing the two armed police forces into a state of confrontation. The Commission has already noted the role of the authorities in the various incidents which ultimately culminated in the general conflict. Here the Commission would like to summarise its conclusions on some of the major events to indicate the role of particular authorities in placement or development of the armed police at different stages in the developing situation :

- (i) The first stage followed the incident of 20th April 1985 when the district authorities of Wokha attempted to construct fencing at the Inner Line Permit Check

Gate on its northern side. When the fencing material was seized by the Assam Police authorities consequent on the lodging of an FIR, a contingent of the Nagaland Armed Police was posted at the Inner Line Permit Check Gate. This contingent moved to the Check Gate apparently on the orders of the 'E' Company Commander, 4th Nagaland Armed Police who was not authorised to order this deployment. Subsequently, of course the retention of this contingent or subsequent additions was under the authority of Deputy Commissioner, Wokha. To quote the then Inspector General of Police, Nagaland, Shri Watts :

"I have an idea under whose order Nagaland Armed Police was inducted into Inner Line Permit Check Gate. It was DC, Wokha. It is within my knowledge that Commissioner, Nagaland had ordered withdrawal of NAP from ILP Check Gate. There was no question of unilateral withdrawal at this point of time. The order just referred to withdrawal of NAP elements from ILP Check Gate which had been inducted by DC, Wokha a few days before. This order of Commissioner was not complied with."

Assam also moved some of their armed units from the Merapani Rear Border Outpost to the Merapani Police Station. It is not clear under whose authority this was done.

- (ii) The second stage is the 22nd April, 1985 incident when Deputy Commissioner, Wokha accompanied by senior civil and police officers went to the Merapani Police Station and during the course of his visit a firing incident took place. Deputy Commissioner, Wokha while returning to his district headquarters left behind some elements of Nagaland Armed Police at the Inner Line Permit Check Gate. It is also clear from Annexure 36 of N-I, a message dated 24th April, 1985, from SDO, Bhandari to Deputy Commissioner, Wokha that some Nagaland Armed Police personnel had come from as far away from Thizama to Merapani and had reported to Deputy Superintendent of Police—i.e., 'E' Company Commander, 4th Nagaland Armed Police. This also seems to have been done under orders of Deputy Commissioner, Wokha although how he was competent to order this movement is not clear. In fact, Shri Watts, Inspector General of Police, Nagaland, in his evidence has said with reference to this message at Annexure 36 of N-I that he could not explain how it says that Nagaland Armed Police personnel despatched from Thizama had reported to Deputy Superintendent of Police at Merapani. No such instructions were issued by him.

- (iii) The third stage relates to the arrangement of the 1st May 1985 arrived at a meeting taken by Inspector General of Police (Border) Assam and attended by the Deputy Inspector General of Police (Eastern Range) Assam and the Deputy Inspector General of Police (Border), Nagaland for withdrawal of armed police forces from the Merapani area. The withdrawal of armed police of both sides was frustrated mainly because of the Deputy Commissioner, Wokha and the rather dubious role of the 'E' Company Commander, 4th Nagaland Armed Police, Shri Lotha. Their activities seem to have been more designed to keep the Nagaland Armed Police where it was rather than to withdraw it. Powerful local politicians of Wokha district also appear to have been involved in this and as a result the armed police of both sides continued—the Nagaland Armed Police at the Inner Line Permit Check Gate and the Assam Police at the Merapani Police Station.

- (iv) Lastly, massive induction of armed police took place from both sides towards the end of May. Three companies of Assam Armed Police were located in the Merapani area round about the 26th-27th May. This was as a result of the decision of a meeting on the 21st May taken by the Chief Secretary, Assam. Similarly, about the same number of companies were deployed by Nagaland about the 28th-29th May in the Merapani area—as a result of a meeting taken by the Chief Secretary, Nagaland on the 28th May, 1985. These decisions were taken by the State Governments who no doubt took into account all factors and possible consequences before arriving at these decisions. There is no particular role of any specific authority of Government calling for any comment.

Village Guards

11.41 The third term of reference actually consists of two parts. The first part, viz. role of the authorities in both the States in mobilising and deploying armed police forces has been dealt with above. In the second part, there is a specific reference to Village Guards of Nagaland and the point for inquiry would be the role of the authorities in the Nagaland Government in mobilising and deploying Village Guards of Nagaland.

11.42 The Assam affidavit A-I says that during the conflict the Nagaland Armed Police personnel were backed and supported by about 4000 to 5000 armed villagers including Village Guards. The Assam Government counter-affidavit A-II which seeks to answer points made in the Nagaland affidavit N-I explains this a little more by giving a specific number of Village Guards. It says that about 1000 Village Guards from as far away as Tuensang/Mon in addition to armed ex-underground villagers numbering about 4000 to 5000 were deployed to assist the Nagaland Armed Police.

11.43 The Nagaland Government position as given in their affidavit N-I is that Village Guards from Tuensang district had to be brought to Wokha district so that they could be able to man the Police outposts and other public installations vacated by the Nagaland Armed Police personnel in Wokha district. However, they could reach only in the evening of 6th June 1985. Village Guards did not have any operational role in the armed conflict at Merapani. Shri N. Jakhalu, Commissioner, Nagaland has also dealt with this point in his affidavit submitted to the Commission. He says here that it is not correct to allege that in the armed conflict between the armed police forces of the two States between the 4th and 6th June 85, the Nagaland Armed Police personnel were backed and supported by 4000 to 5000 armed Naga civilians including Village Guards. The armed police personnel of Nagaland were not supported in the armed conflict by any civilians. Since Nagaland police available in different parts of Wokha district had to be brought down to Merapani on 5th to 6th June 85, Village Guards were rushed to Wokha district as per direction of the State Government to man the police posts and other public installations vacated by the Nagaland Armed Police personnel in the district. However, the said Village Guards from Tuensang district could reach Wokha district in the evening of 6th June 85. Neither the Village Guards nor any of the civilians had any operational role in the armed conflict in Merapani. However, after the declaration of cease-fire and cessation of the armed conflict, some local civilians and villagers assisted Naga police personnel in constructing temporary shelters, movement and supply of food and cooking food for police personnel. They also assisted in evacuating dead and injured Nagaland Armed Police personnel. On and from 7th June 85 morning, skeleton neutral Central force, on 8th June 85 large force of the Assam Rifles took control of the Merapani Sector.

11.44 The position emerging from the information contained in these affidavits, therefore, was that while Assam alleged that about 1000 Village Guards from Tuensang and Mon had been deployed to assist the Nagaland Armed Police, Nagaland while accepting that Village Guards had to be brought down from Tuensang district say that the purpose and object was to have them man police outposts and other public installations vacated by Nagaland Armed Police personnel in Wokha district; they arrived at Wokha district only in the evening of 6th June by which time the fighting was over and they had no operational role in the armed conflict at Merapani.

11.45 The term of reference requires this Commission to go into the role of the authorities in mobilising and deploying Village Guards. Nothing was said on this point in the Nagaland affidavits. After all, even if they had no operational role they must have moved under orders of some authority in Government. The Commission referred to this aspect of the matter particularly at its hearing on 14th March 86 saying that neither of the State Governments had adequately covered the last 3 terms of reference and, therefore, directed them to file all documents, files and

correspondence etc. relevant for proper appreciation of these terms of reference by the 7th April 86.

11.46 In pursuance of this directive, the two State Governments submitted to the Commission, a large number of files and other documents. Some of the files submitted by the Nagaland Government give some information on the specific points in issue in this term of reference and some of the relevant documents contained in these files also appear as the Commission's Exhibits. Some other relevant information is also contained in affidavits by other individual officers from Nagaland and in the oral evidence of some of these witnesses.

11.47 Considering the stand taken by the two State Governments the questions that arise are:—

- (i) Was there in fact mobilisation and deployment of Village Guards of Nagaland at Merapani?
- (ii) If there was, under whose orders was this done?
- (iii) Did the Village Guards so deployed take part in the conflict from 4th to 6th June?

11.48 Commission's Exhibits I, II, III, IV, V, XIII, XIX and XX are relevant for consideration of this issue and are extracted below for facility of reference:—

Commission Exhibit I

FLASH T/210 --GR 50
T—DC TSG
V—Chief Min. Secy Kma.
Cmn/16/BA/85 dt. 4/6

Personal for RAI from SHANMUGAM (.) In continuation of Chief Secretary MSg No. NGO/85 reg. M/Pani clash (.) C.M. desired that 1000 (1000) strong VG Guards contingent should be kept in readiness to move at short notice from TSG (.) Acknowledge and confirm.

We are taking action.

2235/4

RT R/2245/4

Commission Exhibit II

W/T MESSAGE D.I.O.
File No. Con 84(2)/85 (Nagaland) p. 375
To:—DSNL DMR/P.C.M. KMA/ADS MKG/DC WKA (By Hand)
Fr: CSO WKA.
IN: SDO(C) BDRI.
No. SWC-5/85-86—Dt. 5/6 (.) KDLY
ARRANGE TO DESPATCH TEN TRUCKS RPT
TEN TRUCKS LOAD OF CPO RICE TO WKA TO
MEET EMERGENCY DEMAND AT MERAPANI(.)
ANOTHER ONE THOUSAND V.G.s STILL THERE
WITHOUT RATION (.) MMU (.)

Memo No. SWC-5-85-86/202-06 Dated Wokha the 5th June 85.

Copy to :

1. The O/C PRO, Wokha for transmission please.
2. Copy by post in confirmation to :—
 - (a) The Director of Supply Nagaland, Dimapur.
 - (b) The P.A. to CM Kma.
 - (c) The Asst. Director of Supply, Mokochung.

Sd/-

5-6-85

Civil Supply Officer,
Wokha, Nagaland.

Commission Exhibit III

File Con. 15/85 (Nagaland) p. 121—

SECRET

To : Depcom Tuensang

From : Chiefsec Kohima

No. NGO-47/85 dated 15/7(.) Reported that VGs returned from MERAPANI with limbs/organs of dead persons and displayed them publicly in Tuensang town(.) Arms and ammunitions lost in the clash were also taken by them(.) Inquire into these allegations and submit a factual report immdtly(.) Also indicate what action was taken by you in the matter(.) The report is seriously viewed and Government of India has instructed us to furnish detailed report immediately.

Decoded

Sd/-

C.A. 15-7-1985
1545 hrs.

SECRET

Put up on 16/7 as soon as ADC arrives.

Intd.

15/7

Commission Exhibit IV

File No. Con. 15/85 (Nagaland) p. 122.
W.T. Message

Flash

Incipher (Out)
DTO

From : Depcom Tuensang.

To : Chiefsec Kohima.

No. Con. 15/85/650 dated 16/7(.) Kindly ref. yr. Code Message No. NGO-47/85, dated 15th July, 1985(.) We have no such info. reg. VGs taking S/142 HA/87—18

limbs/organs and displaying publicly in Tuensang town(.) In this connection it shd. be recalled that VGs reached Merapani only after the ceasefire was declared(.) Comdt. VG and two VG Asst. Comdts. were personally present at Merapani and they have checked all the VGs returned from Merapani before and no such limbs/organs of dead bodies were brought and publicly displayed nor carried(.) Since the VGs reached after ceasefire declared they had no opportunity to collect any arms as alleged(.) 303 amms collected during patrol about 2050 Nos. of rounds have been kept under safe custody in VG Malkhana Tsg.

Sd/-

(S. S. Rai)

16/7

Deputy Commissioner,
Tuensang.

Issued in cipher.

Sd/-

14/7/85

1400 hrs.

Commission Exhibit V

File No. Con. 15/85 (Nagaland) P. 104.
No. 635/36.

T : CCM DT V.G. TSG

(W) DC TSG

DC WKA

No. CON 34 O (i)/85 dt. 10/6

Ref. Yr. S/No. ADC/Confi/85-86/3, dt. 10/6 and our msg. of even No. dt. 10/6(.) Three VGs are recovering and will be sent to TSG after fully recovered(.)
1530/x

Send thanks.

Sd/-

11/6

Sd/-

17/9/V

Commission Exhibit XIII

File No. CG/Est-23/85-86 page 55.
W/T MESSAGE

DTO

TO : HOMESECY KOHIMA

FRM : COMMANDANT VG TSG

NO. VG/EST-23/85-86/.....DT. 14/8(.)
REF YR SIG CON-26/85 DT. 2/8(.) 2050 RPT
2050 RDS OF 303 AMN COLLECTED BY VG
FROM MERAPANI HAS BEEN DEPOSITED TO
S.P. TSG AS DESIRED VIDE THIS OFFICE ISSUE
VOUCHER NO. VG/QM/AMN-2/85 DT.
14/8/85(.)

No. VG/EST-23/85-86/219 dated TSG the Aug/85.

Copy to :—

1. The OC PR, TSG for transmission pse.
2. The Deputy Commissioner, TSG for info. with refer to his memo No. CON-15/85-86/733 dt. 3/8/85.

Sd/-
Commandant Village
Guards Tuensang

Commission Exhibit XIX

File No. VG/EST-23/85-86 P. 48. (Nagaland).

Government of Nagaland

Office of the Commandant, Village Guards

Tuensang : Nagaland

No. VG/EST-23/85-86/168 dated Tuensang the 17/7/85.

To

The Deputy Commissioner,
Tuensang.

Sub :—MOVEMENT OF VGs IN CONNECTION WITH MERAPANI POLICE ENGAGEMENT IN THE FIRST WEEK OF JUNE, 1985.

Sir,

With reference to your Memo. No. CON-15/85/655, dated 17-7-85 on the subject cited above, I have the honour to furnish herewith the following required information as asked *vide* Commissioner, Nagaland, Kohima Sig. No. CCB-3/83 (Vol-II), dated 16-7-1985.

- (i) First batch consists of 255 VGs under the Command of Shri Shukum Yimchungar, Asst. Comdt. VG Tuensang were despatched on 5-6-1985 at 2400 hrs and arrived Merapani at 1600 hrs on 6-6-1985 (List showing the VGs in Post-wise, enclosed as Annexure 'A').
- (ii) Second batch consists of 352 VGs under the command of Commandant, VG, Tuensang assisted by Sub-Maj. (VG) Makam Yimchunger were despatched on 6-6-1985 at 0800 hrs. and arrived Merapani at 2130 hrs. on same day (List of Post-wise VGs enclosed as Annexure 'B').
- (iii) Third batch consists of 398 VGs under the command of Sub Maj. (VG) Sangtiyimlong Konyak and Sub Maj. (VG) Mongba Khimungan were despatched on 6-6-1985 at 1600 hrs. and arrived Merapani on 7-6-1985 at 0900 hrs. (List of Post-wise VGs enclosed as Annexure 'C').
- (iv) Fourth batch consists of 395 VGs under the command of Shri Thungdi Chang, Assistant

Commandant, VG Tuensang were despatched on 6-6-1985 at 2000 hrs. and arrived Merapani on 7-6-1985 at 1100 hrs. (List of Post-wise VGs enclosed as Annexure 'D').

2. In addition to above, another 350 VGs from various villages kept reserved at Tuensang HQ as ordered.

Yours faithfully,

Sd/- 17/7/85

(M. BASU)

Commandant Village Guards,
Tuensang, Nagaland.

Encl : As stated above

Commission Exhibit XX

File No. VG/EST-23/85-86 P. 30 MQ 191/2-100.

To

V.G. COMDT TSG

(W) DC. TSG

ADC KPE

No. CON/84-785, dated 13/6(.) Pse ref Yr S/No. 108 reg. ammunition taken by VGs of KPE Subdin(.) Matter has been discussed with DC TSG(.) VG have divided captured ammunitions to recoup ammn spent during operation(.) It shall be difficult to collect amns now as there is no record of division of same(.) Therefore, said amn cannot be sent(.) Kfly ack(.)

1500/13

See file.

14/6.

Mobilisation and Deployment of Village Guards

11.49 Regarding the issues at (i) and (ii) above, evidence available to the Commission would suggest that there was in fact mobilisation of Village Guards of Nagaland for deployment at Merapani for the purpose of assisting Nagaland Armed Police—and not that Village Guards were sent to Wokha District to man the police outposts and other public installations vacated by Nagaland Armed Police personnel in that district on their moving to Merapani. It would also appear that no officers of the State Government as such played any role in ordering the mobilisation and deployment of Village Guards. The only documentary evidence is Commission Exhibit No. I. This is a message sent by Secretary to the Chief Minister of Nagaland to the Deputy Commissioner, Tuensang dated 4th June. It refers to an earlier communication by the Chief Secretary in his message No. NGO/85 "regarding Merapani clash" and then says that the Chief Minister desired that a 1000 strong Village Guards contingent should be kept in readiness to move at short notice from Tuensang. The message was to be acknowledged and confirmed. This message itself does not indicate the purpose for which these Village Guards were to be kept in readiness in Tuensang—to man police outposts vacated by the Nagaland Armed Police in Wokha district or to actually go to Merapani.

11.50 The Commission repeatedly asked the Counsel for Nagaland to furnish either in original or in copy the Chief Secretary's message No. NGO/85 referred to in this communication. It was to be expected that it might contain some information relevant to the inquiry. The State Government, however, did not furnish a copy of this message. Coming back to the message of 4th June from the Secretary to the Chief Minister to the Deputy Commissioner, Tuensang, there is no indication here about any orders to the effect that these Village Guards after being kept in readiness should move to Wokha district or Merapani etc.

11.51 Both the purpose of marshalling the Village Guards and the authority ordering their actual movement, to Merapani, however, become clear from the testimony of Shri Basu, who was Additional Deputy Commissioner, Tuensang and also holding at the time the post of Commandant Village Guards. This is what his affidavit says :—

"That a W.T. message dated 4th June, 1985 was received by the Deputy Commissioner, Tuensang from the State Government about 2245 hrs. with the direction to keep 1000 strong Village Guards contingent in readiness so as to move at short notice from Tuensang. The said W.T. message was sent in view of the armed conflict between the armed police forces of the two States of Assam and Nagaland in the Merapani area commencing in the evening of 4th June, 1985. I came to know of the said W.T. message from the Deputy Commissioner, Tuensang in the morning of 5th June, 1985.

That the Deputy Commissioner on 5th June, 1985 sent a W.T. message to Additional Deputy Commissioner, Kiphire, Sub-Divisional Officer (Civil), Shamattor, Noklok, Longleng, Tobu, Longkhim and Tuensang. Extra Assistant Commissioner, Noksang and Circle Officer, Thonoknyu with copy to Commandant, Village Guards, Tuensang, with the request to mobilise the requisite number of Village Guards with further direction that the said Village Guards must reach Tuensang on or before the morning of 6th June, 1985 positively. The Village Guards started reaching Tuensang from the late evening of 5th June, 1985.

That the first batch of Village Guards numbering about 255 left Tuensang in the mid-night of 5th June, 1985 under the command of Assistant Commandant, Village Guards, Tuensang. I was directed by the Deputy Commissioner, Tuensang, to accompany the second batch of Village Guards numbering 352 and accordingly I left Tuensang with the said Village Guards at about 0800 hrs. on 6th June, 1985 and reached Merapani area at about 2130 hrs. of the same day... .."

11.52 Shri N. Jakhalu, Commissioner, Nagaland has said that Village Guards moved to Merapani under orders of the State Government. He was not informed but came to know round about 5th or 6th when they were already on the move. Further, that he had no opportunity to advise the State Government whether the Village Guards services should be called for Merapani area or not—he was out of Kohima during the relevant time.

11.53 Although there is other evidence to show the presence of Village Guards at Merapani, the portion of Shri Basu's affidavit dealt with above, viz. that two batches of Village Guards numbering 607 had moved to Merapani on the mid-night of 5th June and early morning of 6th June would in itself show that they were sent to Merapani and not to police posts etc. in Wokha district. Shri Jakhalu's evidence also speaks of their going to Merapani. He does not say here that the purpose was to send these Village Guards to police posts vacated by Nagaland Armed Police in Wokha district or to look after public installations in the districts. In fact, there has been no evidence produced to show what public installations existed at various points in Wokha district where Nagaland Armed Police had been located and which points they were now vacating. There is also Commission's Exhibit XIX, report sent by Shri Basu to the Deputy Commissioner, Tuensang, on the 17th July, 1985. This gives a summary of the number of Village Guards involved, the different batches in which they were moved and so on. All the four batches spoken of in this report are said to have moved to Merapani. It is, therefore, evident that the stand of the Nagaland Government as contained in the State affidavit that Village Guards were moved from Tuensang district to guard installations and posts vacated by Nagaland Armed Police who had moved to the Merapani area is not correct.

11.54 Commission's Exhibit I, the testimony contained in Shri Basu's affidavit and the statement on this point made by Shri Jakhalu show that the initial marshalling was done under the orders of the Chief Minister. The fact that Village Guards had moved to Merapani in four batches over a period of one or two days is not disputed. Obviously, therefore, apart from the order contained in Exhibit I about Village Guards being assembled at Tuensang and kept in readiness there was a specific order for their movement, to Merapani. Shri Jakhalu, Commissioner, Nagaland, has said in his evidence that Village Guards moved to Merapani under orders of the State Government. In fact, according to him, it is only the Commissioner or the State Government who could order the movement of Village Guards from one district to the other. He himself had not ordered their movement. The Deputy Commissioner, Wokha has said, he was not consulted—he just accepted them when they came. Shri Sitlhou, Deputy Inspector General of Police (Nagaland Armed Police) says that he was not consulted. Shri Shurhiu, Deputy Commissioner of Police (Border), Nagaland says, he was not consulted. Taking all these together, and particularly Commission's Exhibit I, it is clear that the movement of Village

Guards was ordered by the Chief Minister and not by any official.

Village Guards : Dis they take part in conflict 4-6 June ?

11.55 Coming now to the issue at (iii) above viz., did the Village Guards take part in the conflict from 4th to 6th June, it will be useful to quote again from Shri Basu's affidavit :—

"That when I reached the Merapani area with the Village Guards, there was no firing going on in the said area and on contacting the Commandants of 1st and 4th Nagaland Armed Police, I came to know that firing between the armed police forces of two States completely stopped from the evening of 6th June, 1985.

That as it was pitch dark all around during that late hours of the night, I had to find out accommodation for the Village Guards with me and ultimately found accommodation in the nearby local thatch-roofed church and somehow accommodated the Village Guards for the night in the said church. I also spent the night in a hut adjacent to the said church.

The next morning I was trying to contact Deputy Inspector General of Police (Nagaland Armed Police and Fire Service), Nagaland and came to know that he was at Bhandari and accordingly I left for Bhandari, a place at a distance of about 5 Km. from Merapani and met him there.

I was instructed by the Deputy Inspector General of Police (Nagaland Armed Police and Fire Service) to bring the Village Guards to Bhandari and accommodate them in the Government High School at Bhandari. Accordingly, I returned to Merapani area and with the Village Guards reached Bhandari at about 1000 hrs. on 7th June, 1985 and accommodated them in the Government High School as directed. As there was no necessity of the Village Guards in the area, we had to make arrangements for immediate return of the Village Guards to Tuensang. I left Bhandari in the late evening of 8th June, 1985 in advance so as arrange for food etc. of the Village Guards on their return to Tuensang instructing the Assistant Commandants to start with the Village Guards in the early morning of 9th June, 1985 for Tuensang.

The 3rd batch of Village Guards numbering 398 reached Merapani at about 0900 hrs. on 7th June, 1985 and the 4th and the last batch of the Village Guards numbering 395 reached Merapani at about 1100 hrs. on 7th June, 1985. All these Village Guards were accommodated in the Government

High School at Bhandari and from there all the Village Guards returned to Tuensang. The last batch reached Tuensang in the mid-night of 10th June, 1985."

11.56 Shri N. Jakhalu, Commissioner, Nagaland has this to say in his evidence before the Commission :—

".....I have something to do with the Village Guards. The Commissioner is the administrative head of Village Guards. What has been said about Village Guards in Para 28 of my affidavit and at para 63.3(v) at p. 88 of the State Government affidavit to my opinion meets the requirements of the third terms of reference of the Commission. Village Guards is not a statutory force. Village Guards are given basic small arms training. Village Guards are not armed in the real sense because they have obsolete muskets and sometimes .303 rifles. Their functions are to tackle underground people. The Village Guards force should be something like 30 years old. After formation of Nagaland, the Village Guards were not put in status of second line of defence for Nagaland. The force was raised by the Assam Government and the role continues to be the same as determined by that Government. The Commissioner who is the administrative head is headquartered at Kohima but the whole time Commandant is headquartered at Tuensang. Village Guards can be called up under orders of Deputy Commissioner concerned or the Commandant. They are raised, organised under orders of the Commissioner. Entire management of the Village Guards are under the control of the Commissioner. They are not given uniforms, except essential articles like water proof, mosquito net, blankets. Normally, Village Guards cannot move from one district to another for duty except under orders of the Commissioner. The State Government can also order deployment of Village Guards. They should of course inform the Commissioner. Village Guards are sent for training for 10 days (arms training) under the auspices of Assam Rifles, the Army and some time the Police. Village Guards are natural guerilla fighters in their own terrain. The percentage of former underground people is negligible. By and large the rank of the Commandant should be that of an Superintendent of Police or Lieut. Colonel in the Army. Village Guards moved to Merapani under orders of the State Government. I was not informed but came to know. I must have come to know of this on the 5th or 6th when they were already on the move. I had no opportunity to advise the State Government whether the Village Guards services should be called for Merapani area or not. I was out of Kohima headquarters during the relevant time. There was no regular

Commandant accompanied the Village Guards but there was some kind of Commandant in the second batch. On a very rough basis, the first batch moved from Tuensang on the 5th very late reaching Wokha district on the 6th afternoon and the second batch reached Wokha district on the 7th."

11.57 Again at page 10 of his evidence before the Commission Shri Jakhlu states :—

"I had issued clear orders that Village Guards should start moving back on the 8th. I think movement back started on the 8th in small batches. The order I gave about their going back was on the 7th when I was at Bhandari. There was apparently some transport problem and movement back started in small batches on the 8th. Some elements of Village Guards did reach Merapani on the 6th night. I would say might have. I am saying all these not of my knowledge but what I learnt. I am certain of my own knowledge that not only the Village Guards took no part in the actual fighting because they had arrived on the afternoon of 6th but also did not participate in any manner in whatever happened over the next day or two after the cease-fire on the 6th evening."

11.58 Shri Lalthara, formerly Deputy Commissioner, Wokha, now Commissioner of Excise, Nagaland, Page 29 of his oral evidence :—

.....I accepted Village Guards when they came since this was Government decision. I do not know whether I sent reminder but I acknowledged their coming as they came in batches. I remember issuing instructions that they should be given food etc. since they did not have ration of their own. There was no other special treatment apart from this.

According to my information, some of them reached Merapani on the late evening of 6th June by which time fighting was over; they were then sent back to Bhandari. As far as I know they took no part in firing. Village Guards arrived in my district for the first time on 6th June at Wokha at about 1030 in the morning. They must have reached Bhandari about 5-6 P.M. I have seen copy of W.T. message of 5th June from Civil Supply Officer, Wokha to Director Supply, Nagaland dated 5th June. Copy was sent to me. Exhibit Commission II it refers to 1000 Village Guards being at Merapani. According to me it is factually incorrect that there were 1000 Village Guards in Merapani on the 5th June. I have seen letter of Deputy Commissioner, Tuensang, dated 17th July, 1985 addressed to Company Commandant, NL. It says that 1400 Village Guards were sent to Merapani in different

batches and another 350 Village Guards were mobilised and kept in readiness. I have already said that Village Guards did not participate in the actual fighting. Fighting was over by the time they arrived and they were just waiting for arrangements for their return journey was made."

11.59 In his oral evidence Shri Shurhiu, ex-Deputy Inspector General of Police, Nagaland has stated as under :—

".....I was not consulted in the matter of Village Guards being sent to Merapani. I have already mentioned that I saw the Village Guards at Merapani on the 6th evening. I do not agree that after Village Guards were sent to Merapani, DIG (NAP) and I should have been consulted. On the 6th June there was no necessity for Village Guards in the Merapani area....."

11.60 Earlier, this witness had made it clear that Village Guards did not take part in the fighting as by the time they arrived at Merapani, firing had stopped. However, he hints at the possibility of some people having set Merapani bazar ablaze.

11.61 Evidence of Shri Sitlhou, Deputy Inspector General of Police (Nagaland Armed Police), Nagaland :—

".....Village Guards were not deployed and were not placed at my disposal. The Commandant of the Village Guards came to me and I asked him to put them in a school building and arrange to send them back. While sending Village Guards to Merapani I was not consulted. Since I was in command it would have been appropriate if Village Guards were sent after I was consulted. Village Guards did not play any role in the conflict because by the time they arrived the fighting was over....."

11.62 An examination of the evidence quoted above and particularly the testimony of Shri Basu shows that two batches of Village Guards numbering 607 reached Merapani by the evening of 6th June. He himself accompanied the second batch which left Tuensang at 8.00 AM and reached Merapani at 9.30 PM at night. They were all accommodated in a thatch-roofed church building at Merapani.

11.63 Shri Basu left Merapani for Bhandari on the 7th June along with Village Guards and reached Bhandari at 1000 hrs. He left Bhandari for Tuensang instructing his Assistant Commandant to start with Village Guards in the early morning of 9th June for Tuensang. His evidence also makes it clear that the third and fourth batches of Village Guards numbering 793 which had reached Merapani on the morning of 7th June went back to Bhandari and reached Tuensang by the mid-night of 10th June, 1985. He is silent about the actual date and time of the departure of the last two batches from Merapani and Bhandari on way to Tuensang. Another thing that is clear is that the first two batches of Village Guards certainly remained

at Merapani on the night of 6th June and early 7th June while the last two batches numbering about 793 quite possibly remained at Merapani for practically the whole day of 7th June or even some part of 8th June. In any case, even according to Shri Basu, they were all at Bhandari if not at Merapani on these days—Shri Basu himself leaving Bhandari for Tuensang on the 8th June late evening.

11.64 The question that then arises is what exactly were these Village Guards doing at Merapani and Bhandari from the evening of 6th June to the morning of 8th June when the neutral force took over effective control of the Merapani area. Shri Jakhalu says that he is quite certain of his own knowledge that not only did the Village Guards take no part in the actual fighting because they arrived on the afternoon of the 6th but also did not participate in any manner in whatever happened over the next day or two after the cease-fire on 6th evening. Shri Lalithara, Deputy Commissioner, Wokha says that as far as he knows they took no part in the fighting. Fighting was over by the time they arrived and they just waited around for their return journey. Shri Sithou, Deputy Inspector General of Police (Nagaland Armed Police) says that the Village Guards were not deployed and were not placed at his disposal. They did not play any role in the conflict because by the time they arrived the fighting was over.

11.65 Assuming for the moment that the Village Guards took no part in the actual conflict from the 4th—6th June since they arrived at Merapani after the cease-fire on 6th June, the question is whether subsequent to the cease-fire the Village Guards were involved in any fighting or other incidents of a similar nature.

11.66 Shri Shurhiu, ex-Deputy Inspector General of Police, Nagaland says :—

“The cease-fire became effective about 4 or 5 PM on the 6th. There was no fighting after that. Some personnel from the NAP were then left at ILP Check Gate and others were withdrawn to the Coy Hqrs. at the foothills. NAP was nowhere else in the area thereafter. By the 6th of June wherever the fighting took place the area was on fire. It is quite possible that some miscreants might have set fire to the bazar but I have no specific information.”

11.67 Shri K. L. Watts, former Inspector General of Police, Nagaland has this to say :—

“... I cannot say that Village Guards might well have been doing anything in the Merapani area from the 6th evening till the 7th morning because NAP had been withdrawn. I categorically say that we did not allow the Village Guards to cross a particular line even then if some odd person or persons have gone, I cannot say.”

11.68 With the fall of Merapani Police Station and the Rear Border Outpost, the Assam Police were now-

here in the Merapani area. The neutral force took effective control on the 8th morning. From the 6th evening to the 8th morning, the area was the responsibility of the Nagaland Armed Police—whether they were physically present or not. The evidence of Shri Shurhiu and Shri Watts suggests that the Nagaland Armed Police had gone back to their camp at the foothills after the cease-fire. Irrespective of what Shri Watts might say about the particular line which they did not allow the Village Guards to cross and irrespective of Shri Jakhalu's statement that the Village Guards did not participate in whatever happened over the next day or two after the cease-fire on 6th evening, it is clear from Shri Basu's affidavit that there were a number of Village Guards in the Merapani area on the 6th evening and night, the whole of the 7th and possibly part of the 8th morning. The fact that they were just not waiting for transport arrangements for their going back to Tuensang or just sitting at the Government High School at Bhandari will be clear from some of the Commission Exhibits which speak of some Village Guards “recovering” or a number of rounds of .303 ammunition being collected by Village Guards or their dividing captured ammunition to recoup ammunition spent during operation. These need to be examined to see what exactly was the role of the Village Guards at this time.

11.69 Commission's Exhibit III can be ignored in view of the report furnished to the Chief Secretary, Nagaland by the Deputy Commissioner, Tuensang—Commission's Exhibit IV. It is, however, not possible to ignore information contained in Commission's Exhibit V, XIII and XX. Commission Exhibit V refers to a message from Deputy Commissioner, Wokha, to Deputy Commissioner, Tuensang about three Village Guards recovering, it being said that they would be sent to Tuensang after they had fully recovered. The Commission called for medical report about these Village Guards. Papers furnished by Nagaland suggested that they were suffering from diarrhoea. This explanation seems to be far fetched. One need not be hospitalised for diarrhoea and the ailment is simple and can be cured within a day or two with antibiotics. The fact that this was not a case of diarrhoea but some injuries or others suffered by the Village Guards would be further corroborated by a message dated 6th June contained in Nagaland Home Department File No. CON 26/85 (Volume I), at page 260 which indicates the considerable anxiety of the Deputy Commissioner, Tuensang, to be kept informed about casualties in respect of Village Guards in the Merapani area. Deputy Commissioner, Wokha's message of 10th June—Commission Exhibit V—is obviously with reference to that. The message of 6th June 1985 is as follows:—

“WT message from DC KPE to DC Wokha—
Info DC TSG/Commission/Home Commissioner/CS/SpI. Secretary to the C.M. Kohima dated 6-6-85.

Would like to inform you that 214 Village Guards from KEP Sub-Division have already been mobilised and despatched to

TSG early this morning for deployment in your area. It will be appreciated if the sitrep pertaining to the Village Guards casualty if any during confrontation especially from KEP Sector should be *sent in code*. Reason being if Village Guards of my Sector sustain any loss such information once known to the public will unnecessarily flare up public sentiment and mob violence against the Assamese and other non-locals within my Sub-Division. I would like that the same should be applied to TSG Sector. Therefore, kindly send all sitrep of casualties of Village Guards strictly by Code message. ..."

11.70 There are then Commission's Exhibits XIII and XX. The former refers to 2050 rounds of .303 ammunition having been collected by Village Guards from Merapani and deposited etc. Commission's Exhibit XX is even more specific and refers to ammunitions taken by Village Guards of KPE Sub-Division. The message says that the Village Guards had divided captured ammunition to recoup ammunition spent during operation. It is categorically said here that some captured ammunition was divided amongst Village Guards "to recoup ammunition spent during operation." One cannot, therefore, take the plea that all that the Village Guards had done was to get hold of ammunition which had been captured, they themselves having done nothing at all. There is a specific reference to ammunition spent during operation. If, therefore, the Village Guards took no part in the conflict from 4th to 6th June, this ammunition was obviously spent some time from the evening of 6th to the morning about 8th June. There is of course no evidence before the Commission as to what were the specific acts of any depredation, looting, burning etc. in which the Village Guards were involved but there is no denying the fact that there was considerable destruction of property etc. in the area.

11.71 There is yet another point. It is quite possible that the Village Guards did participate in the conflict itself in its dying phases on the afternoon of 6th June. There is evidence to show that the first contingent of Village Guards arrived not in the evening of 6th June after the cease-fire but before that. Shri Basu's report Commission Exhibit XIX itself says that the first batch of 255 Village Guards under the command of Shri Sukum Yimchunger, Assistant Commandant left Tuensang at 2400 hrs. on the 5th and arrived at Merapani at 1600 hrs. on the 6th June. There are then two messages in Deputy Commissioner, Wokha's file No. CON.34(2)/85 which because of their contemporaneous nature would provide the most accurate information. There is a message from the Deputy

Commissioner; Wokha to the SDO, Bhandari and the Deputy Inspector General of Police (Nagaland Armed Police) camp Merapani dated 6th June at page 381 in this file. It says the first batch of Village Guards from Tuensang arrived at Wokha on the 6th June at 1030 AM. The contingent consisted of 255 armed men and 35 unarmed men under the command of Shri Sukum Yimchunger, Assistant Commandant and two Junior Commissioned Officers. The message further says that after having lunch at Wokha they were leaving for Merapani at 1100 hours.

11.72 At page 346 of the same file there is a message from the SDO, Bhandari to the Deputy Commissioner, Wokha dated the 6th June reproduced below:—

"No. CON-2/85-86 dt. 6/6. Sitrep. PS' Assam Merapani set fire by NAP troops at 1350 hrs. (2) VGs reached this loc at 1400 hrs. Firing continues. Casualty if any will intimate report later."

11.73 Merapani is just about 4 or 5 Kms. from Bhandari and, therefore, their presence at Bhandari at 2.00 PM on the 6th June means their presence at Merapani about the same time.

11.74 In the light of this, the possibility of Village Guards having participated in the fighting on the 6th June in the last few hours cannot be ruled out. In any case, as has been indicated above, without such fighting or being involved in similar activities Village Guards could not have been injured nor could they have been dividing captured ammunition amongst themselves to recoup ammunition spent during operations.

11.75 The position regarding this part of the third term of reference, therefore, is:—

- (i) Mobilisation and deployment of Village Guards was ordered by the Chief Minister; no authority at the official level was involved.
- (ii) There is evidence to suggest that the Village Guards were involved in acts of shooting and other similar activities over the period 6th June evening to about 8th June morning.
- (iii) There is also evidence to suggest that in all probability, the Village Guards took part in the conflict in its dying moments on the afternoon/evening of 6th June; they took no part in the conflict on the 4th June, on the 5th June and till about 3.00 P.M. on the 6th June.

CHAPTER XII

LAPSES OR DERELICTION OF DUTY ON THE PART OF OFFICIALS AND UNIFORMED FORCES OF THE TWO STATE GOVERNMENTS

12.1 The Fourth term of Reference the Commission is required to deal with is :

- whether there were any lapses or dereliction of duty on the part of the officials and uniformed forces of the two State Governments.

12.2 Before trying to locate any lapses or dereliction of duty on the part of these officials, it will be just as well to be clear about the precise meaning of the two terms. The term lapse in the context in which it is used here is defined in the Chambers 20th Century dictionary as "a failure in virtue, attention, memory etc." or "failure owing to some omission or non-fulfilment. The Random House dictionary describes the word lapse as "a slip or error, often of a trivial sort" or "failure to maintain a normative level" or "a fall from the previous standard." Other terms which can be considered as synonymous would be mistake, negligence, omission, error, failing. The Chambers dictionary defines dereliction in the context applying in this case as "unfaithfulness or remissness. The term can also be defined as "a deliberate or conscious neglect." Synonymous words are negligent, negligence, non-performance, remissness. According to Webster's dictionary, the word lapse means "to fall away from; fail to maintain standard of conduct." Dereliction is described as "an abandoning; neglect; failure to carry out task; remissness."

12.3 In considering any lapse on the part of the officers and the uniformed forces of the two State Governments, the Commission will take the word to mean specific omission i.e., omitting to do something that one is supposed to do. Ordinarily, and as the definition above also would show, the word lapse would include mistakes, errors and so on even of a trivial nature. It is not the intention of this Commission that any mistakes or errors of this type or errors of judgement committed by officials and uniformed forces should be taken as lapses. Not all decisions taken by Government functionaries are always correct or the best possible decisions. There can be decisions which in retrospect are seen to have been mistakes. Sometimes resulting in major adverse consequences, financial or otherwise. At the time that these decisions are taken however, in the well considered judgement of those taking them they are correct. The Commission will not take such instances as lapses and unless it can be shown that there was a specific and deliberate omission on the part of an officer to do something he was supposed to do or that there was the deliberate doing of something that patently should not have been done, he will not be held responsible for any lapse.

12.4 Dereliction of duty is more than just dereliction. While dereliction may be a fall, neglect, negligence, dereliction of duty in the sense that it applies to actions of officials and particularly those in uniform would for the purpose of the Commission mean deliberate or conscious neglect in the performance of tasks set or of the functions which go with the holding of a particular office or post. For the police forces, therefore, this would mean failure to carry out orders of superior officials, failure of commanding officers at different levels to be with their men, lack of leadership qualities and so on.

Uniformed Forces

12.5 Within the framework as stated above, actions and behaviour of officers and men of the uniformed forces of the State Governments of Assam and Nagaland will be examined first to see whether there was any lapse or dereliction of duty on anybody's part.

12.6 There is of course, a basic difficulty here. We have in the present case the rather odd situation of police forces of two States forming part of the same country fighting each other. The armed police or armed constabulary of the different States has as its task or objective the maintenance of law and order, or to be more specific, to help the administration and the civil police in this work. The Central armed police similarly is supposed to help the administration of State Governments in maintenance of law and order if so required. It is certainly not the function of the armed State police to fight a battle or war with the armed police of another State. In this, reasoning, it could well be held that such confrontation is itself a dereliction of duty and all those who in the first instance ordered the fight, and then those who as part of the uniformed forces of the two States participated in the fight would be guilty of lapses or dereliction of duty.

12.7 The Commission is, however, conscious of the fact that the Government of India did not have this rather abstract conception in mind when laying down this particular term of reference. The matter will, therefore, be examined in the generally understood and less lofty sense. In other words, were there any deliberate omissions on the part of any police personnel to do something he was supposed to do as part of his service conditions? Was there any conscious and deliberate neglect on his part in carrying out orders issued by superior authority? Was there criminal negligence by him?

The Nagaland Armed Police

12.8 In less than 48 hours, the Nagaland Armed Police had overrun all the Assam Police positions in

the Merapani area and had put the well armed Assam Armed Police to flight. As a matter of fact, the heavily fortified Forest Check Gate of Assam was captured and destroyed by about mid-day on the 5th June and a number of other outposts including those at Velluguri had also been captured about the same time. The other major irritant to Nagaland, the Merapani Police Station had been captured by the afternoon of 6th June. To make their supremacy plain for all to see, the Nagaland Armed Police had also overrun the Merapani bazar and even captured the rear Border Outpost of Merapani which was in a sense the field headquarters of the Assam Armed Police. There can, therefore, be hardly any question of dereliction of duty on the part of any officer or on the part of any of the fighting men in the Nagaland Armed Police or of any lapse. In point of fact, the task that was set for them was accomplished remarkably well and looked at from this point of view, the Nagaland Armed Police, men as well as the commanding officers would be worthy of commendation.

12.9 There is, however, one sense in which it can be said that there is an element of what might be termed a lapse or failure to do what the Nagaland Armed Police should have done. It seems that the major destruction of property etc. took place mainly from the evening of 6th onwards for a day or so till the neutral force moved in and effectively took control on the 8th of June. For more than a day, therefore, the Merapani area was or should be considered to be under the control of the Nagaland authorities. Both States have themselves generally accepted that this was a kind of mini war. One would, therefore, expect that the usual ground rules and codes of conduct that apply in such situations would apply in the present case also. In other words, the Assam Police having been defeated and Assam being no longer in a position for this duration to enforce its writ in the area, protection of lives and property of the civilian population would lie with the victor.

12.10 The line taken by Nagaland on this point seems to be that the Nagaland Armed Police did not at any time remain in actual possession of the area as such. After its objectives like the capture of Merapani Police Station, removal of the Forest Check Gate etc. had been achieved, the Nagaland Armed Police went back to its camp at the foothills. Shri Wati who was then Commandant 1st Battalion Nagaland Armed Police and in command of the forces in the Merapani area in his evidence given the impression that after the 6th evening when fighting ended and till about the 8th morning when the neutral force moved in, the Nagaland Armed Police was not in the Merapani area. He says that the Velluguri Assam Armed Police post was abandoned by about 11-00 O'clock on the 5th morning. The Nagaland Armed Police did not occupy this post and it was just left as it was. Further that the Forest Check Post was abandoned by the Assam side at about 1-00 P.M. on the same day and here again the Nagaland Armed Police did not occupy it. The advance of the Nagaland Armed Police according to Shri Wati towards the Merapani bazar side on the 5th and the 6th June was in the shape of guerilla attacks and forays.

12.11 The then Inspector General of Police, Nagaland, Shri K. L. Watts has more or less said the same thing. He says after the cease-fire on the 6th evening, the Nagaland Armed Police withdrew to the foothills in Merapani and Bhandari except from the Velluguri Seed Farm. According to him, the area was under nobody's control from the 6th evening till the 7th morning when the neutral force, the Assam Rifles, arrived and took over effective control from the 8th afternoon. According to Shri Watts, the Nagaland Government did not have any responsibility in looking after law and order in the entire Merapani area as in the circumstances prevailing from the 6th June onwards it was not possible to do so after the fall of Merapani on the 6th June and withdrawal of the Assam force.

12.12 It is not clear what exactly this witness means when he says that it was not possible to do anything about law and order in the circumstances prevailing from the 6th June onwards and till the neutral force had taken over effective control on the 8th June. He did not expatiate on these circumstances or explain why it was not the responsibility of the Nagaland authorities to maintain law and order.

12.13 A somewhat different position emerges in the evidence tendered by Shri Shurhiu, Deputy Inspector General of Police (Border), Nagaland, at the time. He does say that after the cease-fire became effective about 4-00 or 5-00 P.M. on the 6th, there was no fighting and some personnel of Nagaland Armed Police were then left at the Inner Line Permit Check Gate and others were withdrawn to Company Headquarters at the foothills. The Nagaland Armed Police were nowhere else in the area thereafter. This bit of his evidence would tend to confirm what has been stated by Shri Wati and Shri Watts viz. the Nagaland Armed Police had gone back to their camp after the cease-fire. However, elsewhere in his evidence, Shri Shurhiu says that the Merapani area was under the control of the Nagaland Armed Police. To quote "it is correct that by the 6th evening Merapani and Merapani bazar had come completely under the control of Nagaland side. As the population of Merapani area and Assam Police personnel had vacated the area. I did not ensure that steps were taken to protect the lives and property of the people in the area. Deputy Inspector General (Range), Deputy Inspector General (Training) and myself left for Kohima on the 8th night. The three of us and Deputy Inspector General, Nagaland Armed Police were in Bhandari on the 6th evening. It did not strike me that it was necessary to provide protection to the lives and property of the people of that area. There were no constraints preventing me from taking necessary steps to provide such protection..." He also says that the killings of some persons at Merapani bazar took place when four Deputy Inspectors General from the Nagaland side were in the Bhandari/Merapani area. Merapani bazar was then under the control of Deputy Inspector General, "Nagaland Armed Police and Mr. Wati, Commandant of the 1st Battalion, Nagaland Armed Police was the commandant in charge on the 6th.

12.14 Even otherwise, common sense would dictate that after the Assam Police had withdrawn from the Merapani area and till the neutral force took effective control—and in this case this was only on the 8th June morning or so—the area would certainly be the responsibility of the victor; which means the Nagaland authorities and therefore, the Nagaland Armed Police and the Inspector General of Police. It was, therefore, a lapse on the part of those in charge of the area during this limited period in not providing appropriate protection to those civilians still in the area or at least protection to the property of these people. This can at the same time be said only in the general sense. No specific officer can be held responsible as such—particularly considering that there were a number of authorities including local political leaders taking active part in all that was going on at this time. It would be pointless to blame the senior police officers in the light of the following:—

TO : POLICE KMA

FM : C/M PANT

NO. NIL DT 9/6 (.) HON MINISTER FIN VISITED BHANDARI ON 8/6 AND INSTRUCTED US NOT TO LISTEN TO COMM/NOR IGP IN CARRYING OUT OUR TASK (.)

Sd/-

Shurthi
DIG(B)

The Assam Armed Police

12.15 In the statements and affidavits furnished to the Commission by the Assam authorities there was hardly any material given on the basis of which the fourth term of reference could be gone into. In fact, the Commission had to make an observation on this point at one or two of its hearings but even with this nothing was communicated by the Assam side as such as to the manner in which the officers and men of the Assam Armed Police posted in the Merapani area functioned or acquitted themselves during the conflict. It was left to the Commission to get hold of some material from files which were submitted by both sides as a result of directions issued through its orders of 12th February and 14th March, 1986.

12.16 Among the files submitted by Assam, there is a file, No. DER/298-85/Pt—1985 from the Office of the Deputy Inspector General of Police (Eastern Range), Jorhat, Assam, which contains information which is of some relevance. Essentially, the file consists of an initial report sent by Shri P. V. Sumant, Deputy Inspector General of Police (Eastern Range) dated the 11th June, 1985 in which he gives an account of how things went from the 4th to the 6th June and his appreciation of the Assam Police. The file then contains some queries or rather notes seeking Shri Sumant's explanation on various points sent by the Director General of Police, Assam, Shri Pathak.

The first such note is dated the 27th June, 1985 and is with reference to Shri Sumant's report of 11th June seeking clarifications on some issues. There is then a long note or report by Shri Sumant which answers the points made by the Director General of Police and in addition gives an exhaustive account of the manner in which the various units of the Assam Armed Police functioned during these days, the quality of leadership provided by the Commandants and Assistant Commandants etc., the quality of arms and ammunitions and other equipments with which these units came, the quality of their training, the role of the various officers who were present at this time including his own and so on. Some further questions were asked by the Director General of Police in a note on 13th August, 1985 and these were also answered by Shri Sumant in a report sent by him on the 9th September, 1985.

12.17 The three reports of Shri Sumant are quite informative and exhaustive. Not only do they contain an account of the happenings over these two days but also give an assessment by Shri Sumant of various aspects which have been referred to above. His general assessment and conclusions do not seem to have been questioned by any senior police officers concerned or the Director General of Police. As a matter of fact, Shri J. S. Pathak, the then Director General of Police has stated in his evidence before the Commission that he generally agreed with the comments and observations made by Shri Sumant in his communications of 11th June, 29th July and 22nd September (the third communication available to the Commission of Shri Sumant is dated 9th September and not 22nd September). The Inspector General of Police (Border), Shri B. D. Kharakwal who was the superior officer in command of the Assam Armed Police operating in the Merapani area and to whom Shri Sumant was answerable has said in his evidence before the Commission that he agreed with the assessment made by Shri Sumant on the performance of the Assam Armed Police and the deficiencies pointed out by him in his report of 11th June, 1985. Shri M. R. Choudhuri was Inspector General of Police (Training and Armed Police) at the time. He appeared as a Commission witness and tendered evidence. While he has not said anything specifically with reference to Shri Sumant's report or his assessment, comments and conclusions, what he says in his evidence generally tends to support the various observations of Shri Sumant. The relevant portion of Shri Choudhuri's evidence is as below:—

"..... It is correct to say that there was mismanagement of the police force in the State at the higher level at that point of time i.e., April-June 1985, and this was prevailing for 5-6 years. I agree with your suggestion that basically the failure at Merapani is due to crisis of confidence, crisis of leadership and collapse of command structure as well as the training deficiency. I do not subscribe to the view that I had any share of responsibility in the debacle which Assam Police faced during the armed clash in June 1985 but I

share the indignity which the Assam Police had suffered....."

12.18 In this background, it will be useful to go into the general conclusions reached by Shri Sumant as to the health and general competence of the Assam Armed Police in all aspects. The total failure of command and leadership, mismanagement and mal-administration in the police organisation, the failure of logistical support and the total confusion and disarray prevailing in the Assam force is evident from some of the observations and comments contained in these reports :—

- (i) The original forces deployed in the area of operations were of the 1st Assam Police Battalion and 3rd Assam Police Battalion. They are used to Border Outpost operations and hence fought well and gave a good account of themselves. The low morale of the reinforcements and their unpreparedness both mentally and physically effected adversely the morale of the existing deployed forces.
- (ii) The reinforcements that were sent should have been from these Units only. However, reinforcements came piecemeal from various Units like 2nd Assam Police Battalion, 8th Assam Police Battalion, 10th Assam Police Battalion, 11th Assam Police Battalion, 1st Assam Police Task Force, Assam Police Training Centre etc. Moreover, the full complement of Company Commanders, Gazetted Officers did not accompany them. Consequently, due to this mixture of several units, there was no cohesiveness among these reinforcements and this adversely affected their operational efficiency. Further, most of the personnel of these units, came straight from law and order and security duties, where they had been deployed for a long time, and as such were unprepared physically and psychologically for a war-like situation to which they were sent.
- (iii) Of the other Units, the platoon of 2nd Assam Police Battalion, came fresh from law and order/security duties and as such had only law and order scale of armaments and as such could not be effectively utilised.
- (iv) Of the two Companies of 8th Assam Police Battalion that came (one of which came in the evening of 5-6-85 and the other during the early hours of 6-6-85) personnel of nearly four platoons strength, slipped away from their positions soon after deployment, some of them even reportedly surfacing at their own Battalion Headquarters at Barhampur after a few days. These two Companies started arriving from late in the evening of 5-6-85 and the last of them came only in the early hours of 6-6-85. By the time the full two Companies arrived and were deployed. It was found on the ground, hardly about two platoons of them

left at the place of deployment. The one Assistant Commandant of 8th Assam Police Battalion who came with these two Companies was an old officer having only a few months of service left to retire.

- (v) There were seven platoons of 11th Assam Police Battalion received on paper. The platoon which was sent to Velluguri as reinforcement on 3-6-85 showed a great reluctance to fight. Two other platoons slipped away during the fighting on 5th June 1986. The other four platoons clustered at the Merapani Border Outpost (Rear) and refused to go forward. The panic they showed, even while at the Merapani Border Outpost (Rear), was to be seen to be believed. Ultimately in the afternoon of 6-6-85, when in the final assault, Merapani Police Station was under maximum pressure, these four platoons bolted away with their vehicles. It was also noticed that the Commandant 11th Assam Police Battalion, who was aware of the panic shown by his personnel during the night of 5th June, left Merapani, apparently for his Battalion Headquarters in the morning of 6th June 1985. Considering the morale of his forces, he should have remained at the post.
- (vi) The 11th Assam Police Battalion personnel even refused to back their own Commandant or obey his orders. Even their lone Assistant Commandant who came only on 6-6-85, took the first chance to slip away. He even mentioned on one occasion that the personnel did not listen to him. This Assistant Commandant was sent to be incharge of the forces covering one flank but after some time he slipped away. The 2nd-in-Command of the 11th Assam Police Battalion who was there from the 5th June was not readily available on 6th June 1985. Later, at the time of retreat, he was seen well ahead of the rest on the road to Golaghat along with his Assistant Commandant.
- (vii) This reluctance on the part of these personnel to move ahead was reported to the Inspector General of Police (Training & Armed Police) during his visit to Merapani Border Outpost (Rear) on 6-6-85 morning and they were shown clustered there. The Inspector General of Police (Training & Armed Police) also spoke to them, but they neither had the morale nor courage nor the inclination to stay and fight.
- (viii) The platoon of 10th Assam Police Battalion was sent to the front on arrival on 5-6-85. But they also gradually slipped away. After the action they were reported missing. But the whole platoon was reported to have surfaced in tact on 9-6-85 at Dargaon. This only shows the alacrity with which they slipped away, and that they did not remain in their positions to fight.

- (ix) The Company of 3rd Assam Police Task Force that came on 6-6-85 morning, was of not much use either. They reached the area very slowly. First, a platoon, then the next and finally the third. They took about two hours to unload themselves and initially reported without their ammunition. Finally, when being sent forward, they showed an equal amount of reluctance to go ahead but were in the vanguard to get back into their vehicles to go away.
- (x) When the final onslaught came and the Merapani Border Outpost (Rear) itself was under fire, all the above personnel fled, leaving only about 15/20 personnel, mainly of the 1st and 3rd Assam Police Battalions to defend the post. Considering this withdrawal from the post had to be effected as a proper defence was not possible with this quantum of force and also to avoid further casualties.
- (xi) This behaviour on the part of reinforcements and their act of fleeing affected the morale of the fighting forces adversely. Consequently, this affected the performance of the originally deployed forces of the 1st and 3rd Assam Police Battalions.
- (xii) The fleeing units refused to listen to Senior Officers. The Company Commander of 8th Assam Police Battalion was ineffective considering his age etc. The Commandant 11th Assam Police Battalion who was there from the morning of 5-6-85 left in the morning of 6-6-85 and was not there to control his force. The 2nd-in-Command 11th Assam Police Battalion and the Assistant Commandant, 11th Assam Police Battalion were ineffective and had slipped away quite some time before the end. There was no Assistant Commandant with the 1st or 3rd Assam Police Task Force. Consequently, it was finally left to the outside officers like Deputy Inspector General of Police (Eastern Range), Superintendent of Police, Jorhat and Sub-Divisional Police Officer, Golaghat to try and control these Units. As for the Battalion officers, the new Commandant 3rd Assam Police Battalion; Assistant Commandants of 3rd Assam Police Battalion and one Assistant Commandant 1st Assam Police Battalion were the only officers left. Hence it was that only the 1st and 3rd Assam Police Battalions fought the best and hardest.
- (xiii) Many of the personnel of 11th Assam Police Battalion and Assam Police Task Force Units were unfamiliar with the use of the Light Machine Gun and 2" Mortars. Most of the personnel of all the Units had not fired their weapons for a long time and as such were not very efficient or effective.
- Even those personnel who had fired 2" Mortar and Grenades in practice, had last done so in 1974, after which, reportedly, such practices had been stopped.
- (xiv) There were frequent cases of Light Machine Guns turning defective. Such cases were being reported from the night of 4th June and throughout 5th and 6th June. As such replacements for the Light Machine Guns had to be asked for and they had to be replaced. Later it turned out that quite a few of these which turned defective did so due to lack of knowledge among the personnel to adjust the gas vents or change the barrels in time. This was due to lack of knowledge and lack of practice. There were even cases reported of rifles turning defective and jamming.
- (xv) It also turned out that quite a few HE 2" Mortar bombs turned blinds. In quite a few cases the bomb caps or pins were not removed and the aiming was not proper due to which their effectiveness was lost. This was due to the personnel not having fired the weapon at all, earlier, in range practice. It was later learnt that range firing of 2" Mortar and Grenades had been stopped for Assam Police Battalions since 1974 when the last such range practice was held. This lack of training and practice resulted in lack of fire control, lack of effectiveness and wastage of ammunition.
- (xvi) Due to the personnel fleeing with the available vehicles it was not possible to take out the ammunition stocked in the Rear Border Outpost.
- (xvii) The main loss of arms and ammunition was due to these being left behind by personnel in the posts as found defective and to a large extent by the personnel fleeing, who fled leaving their personal arms/ammunition and other equipment. This is clear from the fact that quite a good number of the personnel surfaced at Battalion Headquarters own houses, houses of relatives etc. over the following few days without their arms/ammunition/equipment.
- (xviii) The Assam Police Training Centre platoons were of an assorted group consisting of personnel from various units undergoing non-commissioned officer's training. As such, they could not achieve the cohesiveness and effectiveness of regular platoon of single unit.
- (xix) In the stocks of ammunition received as replenishment, quite a good number of HE Grenades were found unprimed.
- (xx) During the night Shri S. Talukdar, Assistant Commandant 3rd Assam Police Battalion

was asked to go to Velluguri with the reinforcements. But he did not go. Shri D. N. Hazarika, Assistant Commandant, 1st Assam Police Battalion was asked to go to the Forest Check Gate post. He could go upto the Merapani Police Station but could not proceed further and returned. Assistant Commandant S. Barman was retained at Merapani Rear Border Outpost to organise the defence there and to regulate and implement sending of reinforcements and replenishments as required.

- (xxi) On 5-6-85, Shri S. Goswami, Commandant 11th Assam Police Battalion along with his 2nd-in-Command, Shri N. C. Dutta came around 11-00 A.M. Shri B. P. Rao, Commandant 3rd Assam Police Battalion left around 1200 hrs. to arrange fresh supply of arms/ammunition from his Headquarters. He returned again by 1830 hrs. Shri N. C. Dutta, 2nd-in-Command, 11th Assam Police Battalion was given the charge of marshalling all the reinforcements that were coming from the afternoon of 5-6-85. Shri S. Goswami, Commandant, 11th Assam Police Battalion was asked to go and check the defences of the Merapani Police Station, Quarantine Check Gate and the flank positions. He was also sent to Nagheribill Border Outpost. He returned to Merapani Rear after checking and visiting these places and reported compliance.
- (xxii) Shri G. Bhuyan, the new Commandant, 3rd Assam Police Battalion came later at night, as sent by Inspector General of Police (Training & Armed Police) for some purpose and returned at night itself after a while.
- (xxiii) On 6th June, 1985 Shri S. Goswami, Commandant 11th Assam Police Battalion left for his Headquarters at about 0800 hrs. A little earlier Shri B. P. Rao also left for his Headquarters. They did not return.
- (xxiv) Shri G. Bhuyan, Commandant 3rd Assam Police Battalion came around 8-00 A.M. on 6-6-85 and stayed on till the end. He was sent to the Merapani Police Station and Quarantine Check Gate positions and on the Nagheribill flank quite a few times during the day. The Assistant Commandant, 1st Assam Police Battalion, Shri D. N. Hazarika and the Sub-Divisional Police Officer, Shri N. I. Hussain were also sent ahead to the Merapani Police Station positions frequently.
- (xxv) Shri S. Talukdar, Assistant Commandant, 3rd Assam Police Battalion could not be effectively used, as he was just not readily available whenever required. He remained mostly behind the Border Outpost near the pucca quarters.
- (xxvi) Shri S. Barman, Assistant Commandant, 3rd Assam Police Battalion was utilised for

stocking the extra arms and ammunition received and sending of replenishments/reinforcements. He was also responsible for organising the defences of the Rear Border Outpost, checking of the flank positions and was generally a great asset.

- (xxvii) After about 12-00 noon on 6-6-85, Shri N. C. Dutta, 2nd-in-Command, 11th Assam Police Battalion was generally not available. Shri S. Lushai, Assistant Commandant, 11th Assam Police Battalion who came around 9-00 A.M. on 6-6-85 was directed to take charge of the western flank. He went there but instead of remaining, slipped away and was later seen on the road well ahead of the retreating force. Due to this, the personnel on this flank also slipped away and this affected our defences during the final attack, adversely.
- (xxviii) The personnel who fled, took away all the available vehicles with them. Attempts were made to stop some of the trucks for the purpose of carrying away the arms and ammunition, but they just fled. There were three trucks, but these were bogged down owing to the ground having become muddy due to the rains and due to the carelessness of the drivers in taking out the trucks. The drivers also finally fled and as such these trucks could not be taken out and used in spite of our best efforts.
- (xix) The arms that were lost, were lost in the posts and in the various defence positions as left behind by the fleeing personnel and partly the defective arms that were left behind at the various posts by the personnel on being replaced. Some stock of ammunition was also left behind by the personnel at the posts from where the personnel had withdrawn earlier.
- (xxx) During the final withdrawal, the Gazetted Officers with Deputy Inspectors General (Eastern Range) were Shri A. K. Mallick, Superintendent of Police, Jorhat, Shri G. Bhuyan, Commandant, 3rd Assam Police Battalion, Shri D. N. Hazarika, Assistant, Commandant, 1st Assam Police Battalion, Shri S. Talukdar, Assistant Commandant, 3rd Assam Police Battalion, Shri N. I. Hussain, Sub-Divisional Police Officer, Golaghat and Shri S. Barman, Assistant Commandant, 3rd Assam Police Battalion.

12.19 Shri Sumant had noted one or two other points also. While the original forces deployed in the areas of operation were 1st Assam Police Battalion and the 3rd Assam Police Battalion and had been armed with border scale of arms and ammunitions, the reinforcements sent like the 11th Assam Police Battalion had not been issued with this scale of arms and ammunitions even though instructions were sent to the Commandant in the matter. In fact, this should have been done even in the normal course by the

Commandant when deputing forces for duty on the borders. Then again, Assistant Commandants who are in the rank of Deputy Superintendents of Police and would be in charge of Companies hardly even accompanied their Companies. There was also no system of regular Company Commanders and usually Inspectors or Assistant Commandants just accompanied a Company on an ad hoc basis. The Commandants seemed to pany on an ad hoc basis. The Commandants seemed to Assistant Commandant with every Company. For six platoons of the 1st Assam Police Battalion, for example, there was only one Assistant Commandant and for eight platoons of the 3rd Assam Police Battalion there was only one Assistant Commandant. No Assistant Commandant was sent with 11th Assam Police Battalion platoons even though a message was sent to the Commandant to depute Assistant Commandants. One Assistant Commandant of 11th Assam Police Battalion came only in the morning of the 6th June and the less said about his performance the better. Two Companies of 8th Assam Police Battalion came with only one Assistant Commandant. The Assam Police Task Force had no Company Commanders accompanying them.

12.20 Some of the observations and comments made and the feelings expressed in their evidence before the Commission by top police officers of Assam also throw some light on the state of affairs that existed in the police force at that time.

12.21 Shri J. S. Pathak, the Director General of Police said that because of the prolonged agitation on the foreigners issue, the administration of the police department had been affected. Outposts in the Assam-Nagaland border were under-strength and leisure and discipline of the police force had become casualties. He had in fact, after he took over, discussed matters with the Inspector General of Police (Training) and other senior colleagues on how to improve matters and bring about discipline in the force. Battalion personnel had been spread out in different parts of the State in small groups of even 2 and 3 for providing security to important functionaries. The men had lost contact with their Battalion Commanders, Company Commanders, Platoon Commanders and even Section Commanders. Some improvement had taken place as a result of refresher training etc. Still, with this business of prolonged deployment on security duties in very small numbers with consequent breaking up of regular formations like Companies, Platoons etc., discipline continued to be badly affected. The easy access of these police personnel to all kind of politicians had resulted in their not bothering to care for their superiors. The Director General felt that even at the time of his handing over as Director General of Police, the morale of the armed police was in poor shape.

12.22 Shri Pathak also referred to another aspect of police administration—frequent transfers and transfers at the wrong time. When a specific question on this point was put to him, he said that some Commandants and other officers of the armed police were transferred as late as 29th May, 2nd June and 5th

June. Shri S. P. Kar, Commandant of the 1st Battalion of the Assam Armed Police Shri B.P. Rao, Commandant of the 3rd Assam Armed Police were involved in these transfers. It is not that these transfers had taken place at his level. They were ordered by the Government. He had opposed these transfers because of the situation in the area and even spoke to the Home Secretary and the Home Minister but was told that the transfer orders had been issued by the Chief Minister. Not only this, B. P. Rao had been moving heaven and earth for being shifted from the post of Commandant and posted as Superintendent of Police. According to Shri Pathak, he spoke to the Chief Minister about the situation in Merapani and the desirability of not having any transfer at this time and even specially mentioned B. P. Rao. The Chief Minister agreed that Rao should might continue. As a result, he had sent a message to Rao that even if he had handed over, he should continue. Apparently, this did not happen and a new Commandant, Shri G. Bhuyan came in his place. About the other officer Shri S. P. Kar, he was told by the Chief Minister that since he was being posted as Superintendent of Police of Sibsagar, which was a better post, he should be relieved.

12.23 Shri Pathak went on to say that many of the posts of Assistant Commandants were lying vacant. According to the organisational structure, a Company is supposed to be under an Assistant Commandant of the rank of Deputy Superintendent of Police. This was not possible because of these vacancies and therefore a number of Companies were under the charge not officers of the rank of Deputy Superintendent of Police but Inspectors. As to Assistant Commandants themselves, because of the system of promotion etc., quite a number of them were quite old.

12.24 Shri M. R. Choudhari, Inspector General of Police (Training and Armed Police) accepted in his evidence that there were training deficiencies in the Assam Armed Police. It was his judgement also that this was due to continued deployment for several years of the armed police in connection with the Assam agitation without any rest and without any refresher training. The usual formations in a battalion had also been broken up to tackle this agitation. He had issued several circulars highlighting the defects and degeneration in the armed police and issued suggestions for improvements, his main suggestion being that the armed police should be raised and maintained separately from other branches of the police.

12.25 Shri B. D. Kharakwal was the Inspector General of Police (Border). He was, therefore, in operational command of the armed police located in the Merapani area and would be responsible for their performance in the field. As has been noted earlier, under the arrangement worked out between Nagaland and Assam following the April 1979 meeting under the Union Home Minister, he was actually supposed to be in operational command of not only the Assam Armed Police but even the Nagaland Armed Police and any other Central Police located in the border areas. This of course is a separate issue and, as has been seen, this arrangement never really worked well.

Shri Kharakwal has on the point under discussion said as follows :—

“This Assam Armed Police is under the administrative control of the Inspector General of Police (Training & Armed Police). His functions are basically training and administering Assam Armed Police. When any particular Company etc. are deployed on the border, they come under the operational command of the Deputy Inspector General of Police (Eastern Range) and Inspector General of Police (Border). In the matter of their actual deployment, their fighting operations etc., the Inspector General of Police (Training & Armed Police) is then not concerned. All this is for Deputy Inspector General of Police (Eastern Range) and the Inspector General of Police (Border). Their administration, supplies and arms and ammunition continues to be the function for Inspector General of Police (Training & Armed Police).....

Issue of border scale of arms before a particular Company is deputed to the border would be the responsibility of the Commandant concerned. The ultimate responsibility would be that of Inspector General of Police (Training & Armed Police) and of course of the Director General of Police. Under the rules governing this matter in Assam, a Company Commander is of the rank of Inspector. The rank of Assistant Commandant is Deputy Superintendent of Police/Additional Superintendent of Police. Under the Assam rules an Assistant Commandant is in charge of Wings. A Wing may have two or three Coys. The Commandant would be responsible for designating a Company Commander as in-charge of a Company. If this is done on an *ad hoc* basis, the responsibility would be that of the Commandant. The Commandant's superior officer is the Inspector General of Police (Training & Armed Police). The Inspector General of Police (Eastern Range) would not be responsible since they are given a set of personnel.....”

12.26 The reports of the Deputy Inspector General of Police (Eastern Range) and the evidence of the Director General of Police, the Inspector General of Police (Training & Armed Police) and the Inspector General of Police (Border) show up the Assam Armed Police in extremely poor light. There is no need to repeat the various deficiencies which have been noted above. But broadly, the position was that there was no proper command in the different Companies, instead of officers in the rank of Deputy Superintendent being in-charge, these Companies were left to Inspectors although Inspector General of Police (Border) has said that under the Assam system, Inspectors are in-charge of Companies, that does not seem to be the position as is apparent from the evidence of the Director General of Police and

comments of Deputy Inspector General of Police (Eastern Range). One of the reasons for this deficiency seems to have been that there were a large number of vacancies in the rank of Assistant Commandant. This was certainly a very serious deficiency and obviously affected the fighting capabilities of the men as proper command and control could not be effected at the level of junior officers. There was no cohesiveness amongst the fighting forces, all kinds of units from different platoons seem to have been mixed up; the Commandants seemed, by and large, not to have taken any pains to ensure that the units sent were properly equipped and had the necessary arms etc. Whatever the reasons, the men did not possess adequate training with the result that many of them were incapable of using Light Machine Guns, 2" Mortars etc; the Commandants themselves by and large seem to have put in very brief appearances and some of them were more interested in getting themselves transferred as Superintendent of Police; even at the level of Assistant Commandants there was total lack of leadership in most cases and the men were left to fend for themselves without any superior control or direction.

12.27 Going by the account given by Shri P. V. Sumant in his reports, it seems that from the armed police the only officers who by and large acquitted themselves well were S/Shri D. N. Hazarika, Assistant Commandant 1st Battalion, G. Bhuyan, Commandant 3rd Battalion and S. Barman, Assistant Commandant 3rd Assam Police Battalion. The report speaks poorly of the performance of S/shri S. Goswami, Commandant 11th Assam Police Battalion, B. P. Rao, Commandant 3rd Assam Police Battalion, N. C. Dutta, 2nd-in-Command 11th Assam Police Battalion, S. Lushai, Assistant Commandant 11th Assam Police Battalion, S. Talukdar, Assistant Commandant 3rd Assam Police Battalion. It would seem, therefore, that *prima facie* there were lapses and dereliction of duty on the part of these officers and in any case a detailed inquiry into the whole thing is called for.

12.28 There was failure of command and leadership at higher levels also. The Inspector General of Police (Border), Shri B. D. Kharkwal, as has been indicated earlier, would be the senior-most officer directly responsible for operations of the armed police in the Merapani area during the period in question. He would of course be under the Director General of Police but the functions and performance of the armed police at the border would be the direct and specific responsibility of Shri Kharkwal. Reporting to him would be Shri P. V. Sumant, Deputy Inspector General of Police (Eastern Range) who was also at that time in operational control of the Assam Armed Police in the area. The Superintendent of Police, Jorhat Shri A. K. Mallick would not be concerned although his conduct and behaviour during the operation has been approvingly mentioned in Shri Sumant's report. It is quite clear that if nothing else, these officers, Shri P. V. Sumant and Shri A. K. Mallick, were at least personally present in the Merapani area during these days. Reportedly, Deputy Inspector General of Police (Eastern Range), Shri Sumant moved around

the area of Merapani and Negheribill. He say, he gave constant guidance regarding fire control, direction of fire and movement and positioning of flanking positions. Personnel fighting on the front line were aware of his presence.

12.29 The Inspector General of Police, Shri Kharkwal, however, was not present at Merapani. It seems that after his visit to Merapani on the 1st May when the withdrawal agreement was arrived at, he next came to Merapani after the Chumkedima meeting on the morning of 5th June. He was at Merapani for a few hours and had left by the early afternoon. According to his tour diary at Annexure 10 of A-III, he came to the Merapani Rear Border Outpost at 9-30 A.M. on the 5th from the Golaghat Police Station. He returned to Golaghat at 3.15 P.M. He remained at Golaghat on the 6th morning and then under the directions of the Chief Minister, Assam left for a meeting with Commissioner, Nagaland and Inspector General of Police, Nagaland at 1-25 P.M. arriving at Chumkedima at 3-20 P.M. He seems to have come back to Golaghat at 9-15 at night where he learnt that the Nagaland Armed Police had overrun the Merapani Police Station and the Merapani Rear Border Outpost in the afternoon that day.

12.30 According to Shri Pathak in his evidence before the Commission, Inspector General of Police (Border) had never dreamt that there would be such a massive attack. Shri Pathak's feeling was that once things started going astray, Shri Kharkwal became a little nervous. He had never served as a Battalion Commander and while he (Shri Pathak) would not say that the Assam officers were not equipped to face the Nagaland Armed Police, planning seems to have been poor and in any case he felt that Shri Kharkwal should have stayed on the spot and taken a more active part. The Operational Commander, according to Shri Pathak, would be responsible for the poor planning and this was the duty of the Inspector General of Police (Border).

12.31 After the event, the usual reports and explanations were called for and Shri Kharkwal was also asked by the Director General of Police for his comments on various aspects of deployment of the Assam Armed Police and its operational performance under his command. There is a u.o. note sent by the Director General of Police dated 24th June, 1985 to Inspector General of Police (Border), Shri Kharkwal, Commission Exhibit XXXVII—where assuming that Shri Kharkwal himself had arrived at Golaghat during the evening of 4th June, 1985, the Director General of Police had wanted to know if he visited the Merapani area during the night viz. 4th June, 1985 to check whether—

- (i) the operational deployment of the Assam forces including the gazetted officers in the Merapani Sector was correctly done; and
- (ii) arrangements for regular supply of food, despatch of reinforcement if required, additional manpower, arms and ammunition to forward troops were done properly taking

into account enemy deployment and enemy fire in order to inspire the armed police fighting in the front to keep up their morale and fighting spirit.

He also wanted to know whether Shri Kharkwal had visited the Merapani Sector during the day and night of the 5th June to discharge these duties in his capacity as the highest ranking Field Commander of the armed forces in the area. An extract of the reply given by Shri Kharkwal is reproduced below. It seems that no further action was taken by the Director General of Police or the State Government pursuant to this explanation tendered by Shri Kharkwal :—

"I along with the Commissioner U.A.D. returned to Golaghat at about 9-15 P.M. The D.I.G. (ER) and S.P. Jorhat had left Chumkedima earlier and went to Merapani in pursuance of the decision taken in the meeting. I also sent a W.T. message from Golaghat (Copy enclosed at Annexure 'D') to Sector Commander. Since it was agreed in presence of the Joint Secretary, MHA to stop fire from 8 A.M. the following morning and the D.I.G. (ER), S.P. Jorhat, S.D.P.O. Golaghat had already gone to Merapani area, I did not go to Merapani on that night. I was in Golaghat Police Station in the morning of 5th June, 1985. When I learnt that Nagaland side had not carried out the agreement of stopping fire from 8 A.M. I went with the Commissioner, U.A.D. to Merapani and was there from 10-15 A.M. to 2.45 P.M. The extra arms and ammunition that had been brought from Dargaon and Titabar were lying scattered at Merapani Rear B.O.P. It was not considered advisable to keep these exposed like that. We, therefore, decided to store these by digging a pit. While digging water surfaced just one foot below the ground. It was then decided to keep the arms and ammunition separately in two different out-houses of the Primary Health Centre near Merapani Rear B.O.P. We asked the vehicles to be removed to the road side and reinforcements were arranged for Negheribill and Merapani Police Station and other posts. Injured police personnel were given first aid at Merapani Rear and cases requiring medical treatment were sent to Golaghat Civil Hospital. In view of the threat to Merapani P.S. and Bazar the D.I.G. (ER) was asked to post personnel in two flanks of Merapani by digging position on either side so that the posts and the area could be defended. Exchange of fire continued during our presence and we were surprised that in spite of agreement for cease fire from 8 A.M. Nagaland side had not carried out the agreement made at Chumkedima the previous evening in presence of the Joint Secretary, Ministry of Home Affairs.

I would also like to mention that at Chumkedima, I requested Shri Arya, Joint

Secretary, Ministry of Home Affairs to come to Golaghat and Merapani to see for himself the situation on the ground. I also told him that he would be escorted back to Dimapur on the following morning (5th June, 1985) for him to take the flight of Delhi. Then I.G.P., Nagaland was also requested to come to Merapani with me but neither Shri Arya came to Golaghat and Merapani nor the I.G.P., Nagaland did so. The I.G.P., Nagaland decided to go to Kohima instead.

As regards supply of food etc. to the force personnel on arrival at Golaghat on 4th June, 1985 evening, the Commissioner, U.A.D. and I organised despatch of food packets such as 'loochoi' 'Sabji' 'Cigarettes' 'gur' 'Chira' etc., and sent these to Merapani area. While some personnel could be supplied food packets etc. some others did not receive, as re-inforcements could not proceed due to heavy firing in Merapani area from Nagaland side.

As you are also aware, I was asked by Chief Minister, Assam to proceed to Dimapur again on 6-6-85 at 12.30 P.M. I proceeded to Dimapur along with the Commissioner UAD for discussion with the Commissioner, Nagaland and IGP Nagaland at Chumkedima and held a meeting there once again necessary cease fire agreement was arrived at. The I.G.P. Nagaland came with us to Golaghat and when I reached Golaghat at 9-15 P.M. and went to visit Golaghat P.S., I was surprised to learn from the D.I.G. (ER)/S.P. Jorhat that Merapani P.S. and Rear B.O.P. had been overrun by the NAP that afternoon and that our force had to be withdrawn from this area. The D.I.G. (ER) was the last to leave. As regards I.G.P. Nagaland's visit to Merapani/Golaghat on 6th June, 1985, I have separately informed you the factual position to what actually happened."

12.32 One gathers the impression from the evidence tendered by the Director General of Police, Shri J. S. Pathak and by the Inspector General of Police (Training & Armed Police), Shri M. R. Choudhuri that relations between the two were not particularly good. Therefore, in considering the statements of Shri Choudhuri with reference to the roles of Director General of Police and the Inspector General of Police (Border) etc. allowance will have to be made for this. Nevertheless, there can be no serious difference of opinion with Shri M. R. Choudhuri when he says that deployment of the Assam Armed Police in the border, its actual operations and everything that was involved in the actual fighting would be the responsibility of the Inspector General of Police (Border) and the Zonal Deputy Inspector General of Police (Eastern Range). This position has actually been acknowledged by Shri Kharkwal himself when he says that in the matter of deployment of the armed police, their fighting

operations etc. the Inspector General of Police (Training & Armed Police) would not be concerned and all this would be for Deputy Inspector General of Police (Eastern Range) and the Inspector General of Police (Border) although the administration of the armed police, supplies, arms and ammunitions would be the function of the Inspector General of Police (Training & Armed Police).

12.33 It is true that Shri Kharkwal was at the Chumkedima meeting on the 3rd June and also on the 4th June, 1985. On the 2nd June, he was at Kaziranga, attending the internal Assam meeting preparatory to the Assam officers going for the Chumkedima meeting. Fighting had broken out at about 4-00 or 5-00 P.M. on the 4th June. The 4th June meeting ended immediately, and the two Commissioners stayed back for drafting of minutes. The question of two Deputy Inspectors General from both sides going to Merapani together or separately apart, it was to be expected that Inspector General of Police (Border), Shri Kharkwal, who was in overall control of the Assam Armed Police in the Merapani area would, considering the situation that had developed, immediately proceed to Merapani. This he did not do. He went the next morning, first to Golaghat and then went up to the Rear Border outpost Merapani at about 9-30 A.M. He stayed there for a few hours and returned.

12.34 It is not of course essential that top officers should actually join their men in the fighting but presence and a certain amount of movement in the specific areas of fighting is a source of comfort and inspiration to the men and is certainly called for on the part of Commanding Officers. Shri Kharkwal should have played a more active role in the operations on the 4th June night, 5th June and the 6th June, at least till about mid-day when he was asked to proceed to Chumkedima once again.

12.35 Shri M. R. Choudhuri, Inspector General of Police (Training & Armed Police) was not in operational command of the Police at Merapani. He says in his evidence that it cannot be said that Inspector General of Police (Training & Armed Police) is in any manner responsible for deployment etc. The Range Deputy Inspector General of Police, who in this case was Deputy Inspector General of Police (Eastern Range) would be concerned. Over and above, that there were Sector Commandants to deal with the requirements of the forces at the border. He says further that Inspector General of Police (Training & Armed Police) would not even in the remotest sense have any thing to do with, or be responsible for, what happened at Merapani in the 4th, 5th and 6th June. He was not sure of his exact functions as Inspector General of Police (Training & Armed Police) but accepted that in the absence of a clear definition the designation of the post certainly required his being in charge of training of the Assam Armed Police. He would also be responsible for the quality of that training.

12.36 It will not be possible to accept that Shri Choudhuri would not even in the remotest sense

have anything to do with, or be responsible for, what happened at Merapani on the 4th, 5th and 6th June. It is true that forces located at Merapani were to work under orders and directions of the Operational Commander *viz.*, Inspector General of Police (Border), Shri Kharkwal and more specifically, under orders and direction of Deputy Inspector General (Eastern Range), Shri Sumant and Shri Choudhuri would not be concerned. However, as Inspector General of Police incharge of training of the armed police, he certainly would be answerable for any deficiencies in all aspects of training. These would include the quality of training imparted which in turn would be reflected by such things as capabilities of the men to perform the tasks set, to have some basic expertise in the handling of arms, ammunitions and other equipments entrusted to them, to have a certain level of mental preparedness in facing situations such as the one that arose in this case, and a high degree of morale. To the extent that there were deficiencies in these areas, the conclusion will naturally be that the quality of training imparted at the training centres was not up to the mark, whatever the explanation like the foreigners issue, Assam agitation etc.

12.37 It is also difficult to see why Shri Choudhuri was not clear about his functions. The description and designation of the post itself broadly indicates the functions to be discharged by the Inspector General of Police (Training & Armed Police) and even if the post itself was created at the Inspector General level in March 1983, as Shri Choudhuri's evidence would indicate, the fact remains that a lower post was in existence prior to that. Its functions should have been quite clear. It is another matter whether he wanted complete control of the armed police, its mobilisation, deployment etc. This would be a matter for the Government to decide but in the existing state of affairs there should have been no difficulty about precise functions of this post or that. In any case, the subsequent order issued by the Director General of Police on 29th June—Commission Exhibit XLI does not say anything radical about the functions of Inspector General of Police (Training & Armed Police). Under this order, he would be the functional head of all the police training institutions of Assam, Armed Police Battalions and Task Force Battalions. He would discharge all administrative, executive and financial functions and responsibilities over the men and materials and resources of these organisations subject to supervision by the Director General of Police.

12.38 Apart from this, there were certain specific tasks given to Shri Choudhuri by the Director General of Police at this time and it seems that there was some reluctance on the part of Shri Choudhuri in carrying them out. The following evidence of Shri Pathak, Director General of Police is relevant :—

“.....I had asked IGP (TAP) to proceed to Merapani on 29th May to examine the defensive preparation inclusive of construction of bunkers etc. I gave him a written order to this effect. I asked him to go because firstly, he was IGP (Armed Police),

secondly, he was S.P. of that area earlier for a long period and as DIG (Training) as far as I remember he knew that area. Apart from that, he himself worked at the Naga Hills district when Naga Hills was in Assam. I considered it that Mr. Choudhuri would be the person to advise and guide IGP (Border) and DIG (ER). This order was not complied with. My orders dated 29th May and 1st June are Exhibits A (8) and A (9). My order of 1st June was not complied with. I again wrote to him on 4th June. This order is Exhibit A (10). I sent a further W.T. message on 5th June to Dergaon IGP (TAP) Camp Dergaon. This is Exhibit A (11). He did not go on 5th June. I learnt that he visited Merapani on the 6th June arriving there when heavy firing was being exchanged between the two police forces.

I was not at all satisfied with Mr. Choudhuri's performance in taking appropriate steps to help the police force to bring the situation under control. What was worrying me was that IGP (Border) and Pangte had gone to attend the meeting at Chumkedima and IGP (TAP) knew about this and was at Merapani. Instead of going to Sarupathar, another outpost where nothing was happening, how I wished that Choudhuri stayed at Merapani and guided his subordinate officers in respect of operational matters such as withdrawal or deployment of additional force that were being sent from different places.”

12.39 In Assam Exhibit A (8), the Director General of Police had asked Shri Choudhuri to proceed to Merapani immediately in view of the developing situation there and examine the defensive preparations made by the Assam Police Companies. He was also to examine the position of logistical support and other requirements. Companies deployed in the area were to be in full strength and properly equipped. It seems that instead of going himself, Shri Choudhuri had deputed a junior officer and this was adversely commented upon by the Director General of Police in A (9) when he had again directed Inspector General of Police (Training & Armed Police) to proceed to Merapani without further loss of time. In A (10), there is a reference by Director General of Police to Shri Choudhuri's communication of 1st June where he mentioned that he was suffering from acute stomach dis-order and could not therefore go. In this note also, Director General had again asked Shri Choudhuri to proceed to Merapani as soon as he was fit to undertake the journey. In A (11), which is a wireless message, Director General of Police had asked Inspector General of Police (Training & Armed Police) to proceed to Merapani “tonight” (5th June) and supervise administrative arrangement in the Border Outposts located on the Merapani Sector. He was also required to personally visit A, B & C Sectors and examine the defensive positions and ensure welfare of the force.

12.40 Later, it seems that under orders of the Director General of Police, Shri Choudhuri had visited Barhampur, Ligiri Pukhuri, Titabar and Dargaon and held Durbars with the men at these places and his report dated 19th June, 1985, to the Director General of Police is Commission's Exhibit XLIII. On this Director General of Police called for some further explanations by Shri Choudhuri through his memorandum dated 27th June, 1985—Commission's Exhibit XLII.

12.41 With reference to this note of 27th June, 1985, Shri Choudhuri has stated in his evidence that what he had been required to do by Director General of Police like examining defensive preparation or examining the position of logistical support or operational efficiency or check whether the Companies deployed were in full strength and fully equipped was no part of the functions of the Inspector General of Police (Training & Armed Police) and these would be for the person in operational command i.e., Inspector General of Police (Border) and his officers. He accepted that it was legitimate for the Director General of Police to depute any senior officers for these purposes even if they were performing functions other than those that they were now required to perform. At any rate, he did not go because he was unwell. When he partly recovered he made a brief visit to Nalbari and the next day he covered a long distance to Dargaon on way to Merapani which he visited on the 6th of June. He was aware that the Director General of Police attached considerable importance to his immediate visit to Merapani but he was not willing to accept that he had not complied with Director's General of Police wish. He stated further that he has answered all these points in his explanation. He also said that he had an aversion to preparing the force to face the force of a sister State to indulge in an exchange of fire.

12.42 As has been indicated earlier, relations between the Inspector General of Police (Training & Armed Police) and Director General of Police were not happy and this should be clear from the evidence dealt with above. However, it is clear that some specific directions of the Director General of Police like those contained in his communications of 29th May, 1st June, 5th June, were not complied with. Stomach disorders etc. are not of a serious nature and *prima facie* it appears that Shri Choudhuri could certainly have gone to Merapani as desired by the Director General of Police and he did not do so.

12.43 It would appear, therefore, that a detailed enquiry is called for into all aspects of the performance of the Assam Armed Police including in particular possible lapses or dereliction of duty on the part of S/Shri B. D. Kharkwal, M. R. Choudhuri, S. Goswami, B. P. Rao, N. C. Dutta, S. Lushai and S. Talukdar.

Other Officials

12.44 As for officials other than those of the uniformed forces, there is nothing in the evidence before the Commission to suggest that there were any instances of specific or deliberate acts of omission except possibly those involving Shri Lalthara, Deputy Com-

missioner, Wokha. As the Commission has been at pains to stress, decisions which in retrospect are found to have been wrong or ill-advised but which were taken after due deliberation, cannot be taken as lapses. Therefore, while the Assam Government decision on 21st May, 1985 or the Nagaland Government decision of 28th May were unfortunate, nobody participating in those decision or ordering those decisions can be held to be guilty of any lapse. Similarly, many of the actions of Shri Lalthara might have been impetuous and perhaps lacking in due sobriety and maturity but they cannot be taken as lapses. He was most certainly entitled to his views. In fact, what separates a good officer from a mediocre officer is free and fearless giving of advice and expression of views. We could today do with many more of such officers who give views of their own rather than courtier-like say what they feel they are required to say. In this light Shri Lalthara's views like removing the Forest Check Gate by force etc. do not represent a lapse. They only represent a rather rash and not well considered judgement.

12.45 However, there are one or two instances where Shri Lalthara is *prima facie* guilty of deliberate omission to carry out orders of his superiors. Two instances come to mind. The first is in connection with fencing taken up on the 20th April at the Inner Line Permit Check Gate or even the earlier one in March. Shri Lalthara accepted in his evidence that he was aware of the decision of the Commissioners' meeting where it was decided that the question of shifting the Nagaland Inner Line Permit Check Gate 50 yards towards the foothills would be considered. He was also aware of the recommendations made by his Commissioner—the letter which Shri Jakhlu had written to his Government on the 23rd January, 1985, Commission Exhibit XXXV. A copy of this was endorsed amongst others to Deputy Commissioner, Wokha. Item 5 of this letter clearly says that reconstruction of the Inner Line Permit post was pending for the last few years due to some dispute in the existing location. Commissioner, Nagaland on the suggestion of the Assam authorities had personally inspected the site and found that there was no difference in shifting back the said post 50 yards towards Nagaland from the existing location. Since further delay in reconstructing the Check Post was likely to be to Nagaland's disadvantage, Shri Jakhlu recommended that this shifting might be considered by the Government and immediate instructions issued to the police authorities for reconstruction.

12.46 The Chief Secretary, Nagaland, Shri Longkumer has stated in his evidence that he was aware of Commissioner, Nagaland reference of 23rd January, 1985 recommending the shifting of Inner Line Permit Check Gate away from its existing site 50 yards towards the foothills. While this recommendation was not accepted by the Nagaland Government, at the time that fencing at the Check Gate was taken up on the 20th April, it was still pending with the Government. He goes on to give a statement with which the Commission is unable to agree—that even in the background of Assam's strong reaction to any attempts to put up construction etc. at the Inner Line

Permit Check Gate and also the fact that the matter of shifting the Inner Line Permit Check Post was pending consideration of the Government, he thought it was quite proper on the part of the Nagaland authorities to have taken up fencing on the 20th April, 1985.

12.47 At any rate, the fact remains that as far as Shri Lalthara was concerned, in March and April the matter was pending with the Government. In these circumstances it was wrong and in fact an omission and a lapse to have taken up fencing at the Check Gate. It does not need to be mentioned that even apart from this specific recommendation of Commissioner, Nagaland, the fact that there was strong Assam opposition to any reconstruction, fencing etc. was well-known to Deputy Commissioner, Wokha.

12.48 The second instance is Shri Lalthara's continuing insistence on withdrawal of all Assam Border Outposts and the Merapani Police Station as a precondition for withdrawal of the Nagaland Armed Police stationed at the Inner Line Permit Check Gate after the 20th April, 1985 incident. To quote Shri Watts, Inspector General of Police, Nagaland, "it is not incorrect to form the impression that upto about the 6th of May, the simultaneous withdrawal did not take place because Deputy Commissioner, Wokha was insisting on withdrawal of Police Station Merapani by Assam also....."

12.49 Shri Lalthara was entitled to his views but once his superiors had overruled him on this point, he had no option but to faithfully carry out decisions handed down to him. The difference between a trained civil servant and those who have not been brought up in the administrative ethos is just this,—to abide by decisions taken by ones superiors and to implement them with full and unswerving vigour, no matter how emotionally they might be attached to their own views. Commissioner, Nagaland had clearly decided that the question of removal of these Border Outposts or the shifting of the Merapani Police Station should be delinked from the basic issue, viz. withdrawal of the two forces to the pre-20th April position and had ordered accordingly. There seem to have been some acrimonious exchanges on this as would be evident from the communication which Commissioner, Nagaland was forced to send on 7th of May to the Deputy Commissioner and the Superintendent of Police, Wokha—Commission Exhibit XLVI. It was specifically stated in this message that matters relating to withdrawal of the Assam Police Station at Merapani would be taken up in the next meeting of the Commissioners and further that "any officer attempting to twist or delay the withdrawal of police forces will do so at his own responsibility." There was also a communication from the Chief Secretary, Nagaland to Deputy Commissioner, Wokha of 13th May, 1985 (Commission Exhibit XLV) which refers to Deputy Commissioner, Wokha not implementing the decisions taken by the two Commissioners. He was asked to come to Kohima and discuss the matter with Chief Secretary and Commissioner. In this connection

Chief Secretary, Nagaland's evidence before the Commission is also relevant :

".....In Commission Exhibit XLVI, Commissioner, Nagaland has stated his orders should be carried out and any officer disobeying will do so in his own responsibility. Any subordinate officer flouting the Commissioner's authority is liable to disciplinary action if the matter is brought to the notice of Government. After Commissioner's orders, whatever his own views, DC, Wokha is bound to comply with the Commissioner's orders."

...In view of these orders of the Commissioner, it was not correct on the part of DC, Wokha to have sent the message dated 13th May, 1985 at Annexure 96 in N-VI to the Chief Secretary and others. According to the prescribed procedure DC should communicate with only the Commissioner. Therefore, sending copy of this message to Secretary to the Chief Minister was not proper. I do not think I replied to this message from DC, Wokha. I did not take any action against DC, Wokha. I would have taken action against DC if the Commissioner had sent a report asking disciplinary action. I think Commissioner had complained to me against the DC, Wokha on some other occasion. I am not sure whether he recommended disciplinary action. Usually our system of administration is on verbal basis. This complaint was also probably verbal. I do not remember. I personally feel that whatever is decided at Commissioner's level should have been carried out."

12.50 Even after the Commissioner's communication of 7th May and the Chief Secretary's message of 13th May, Shri Lalthara still continued to express and stand by the same views. In Annexure 96 in N-VI, which was his reply to Chief Secretary's communication of 13th May, 1985 (Commission's Exhibit XLV), he repeated his opinion "we should demand withdrawal of all Assam Armed Police posts from Doyang Reserved Forest and Merapani Police Station as a condition for our withdrawal of Nagaland Armed Police."

12.51 The Commission has already noted the mature, wisdom and sobriety displayed by Shri Jakhalu throughout these two months or so and it is unfortunate that the atmosphere of the time should be reflected by such notes as in Assam Exhibit A (6) where two ministers, the speaker and an M.L.A. of Nagaland had made adverse and unwarranted comments on Shri Jakhalu as below :—

"During the recent visit of the Commissioner, Nagaland to Merapani and Sarupathar and Governor's Camp, without information and knowledge of the public and their leaders and also the administrators of the district, he has made public commitments in in-

fringement of the Lotha tradition and custom in respect of Land, traditional boundary between Assam and Nagaland. The commitments are :—

1. Eviction of Liphayan Village without the approval of the Government (during the coordination meeting between the Commissioner of Upper Assam and Nagaland).
2. He had also ordered for shifting of NAP check post at Merapani from its original place which was in existence even before the State came into being.

Since these commitments are going to have far-reaching ramifications and mis-understanding among the public of the district, C.M. is requested to take up the matter in appropriately. Action taken be informed to the Lotha Public to allay their apprehension.”

12.52 Shri Lalthara's behaviour in this withdrawal matter certainly seems to have been against the orders of his superiors and this would be a lapse.

12.53 It would be desirable, therefore, that the behaviour and actions of Shri Lalthara in these matters are inquired into through a regular enquiry.

12.54 To sum up, a detailed enquiry is called for—

- (i) into all aspects of the general state of the Assam Armed Police and its performance during the conflict from 4th to 6th June including in particular possible lapses or dereliction of duty on the part of S/Shri B. D. Kharkwal, M. R. Choudhuri, S. Goswami, B. P. Rao, N. C. Dutta, S. Lushai and S. Talukdar.
- (ii) into the behaviour and actions of Shri Lalthara, the Deputy Commissioner of Wokha at the time, with reference to the fencing incident of 20th April and non-implementation of various orders and directives of the Commissioner, Nagaland about the withdrawal of the armed police to the pre-20th April position.



CHAPTER XIII

SUMMARY OF FINDINGS

Term of Reference :—

- The sequence of events leading to and all the facts relating to the Assam-Nagaland border conflict during April—June 1985 in the Merapani area the Assam-Nagaland border.

13.1 (i) The conflict of 4—6th June 1985 precipitated by a number of events which took place on the border at Merapani over the period April—June 1985.

(ii) Coming successively one after the other, they led to gradually escalating tension and an atmosphere of hostility which finally snow-balled into the actual conflict.

(iii) The main events were—

- (a) the incident of 20th April when the Nagaland authorities took up fencing at the Inner Line Permit Check Gate;
 - (b) the stopping of this fencing by the Assam authorities consequent on a First Information Report and the seizure of fencing material;
 - (c) the entry of the Deputy Commissioner, Wokha Nagaland, along with some senior police officers into the Merapani Police Station on the 22nd of April;
 - (d) firing of a shot by an Assam Police personnel and the allegation by the Deputy Commissioner, Wokha that it had been fired at him;
 - (e) non-compliance with the orders issued by the Commissioner, Nagaland, to the district authorities of Wokha vide his message of 26th April 1985—Nagaland Exhibit N(13).
 - (f) Non-implementation of the agreement of 1st May 1985;
 - (g) the setting up of the Assam Check Gate on the Golaghat-Wokha road on the 26th May and induction of 3 Companies of Assam Armed Police in the area;
 - (h) induction of about the same number of armed personnel into the area by the Nagaland authorities on the 29th and 30th of May 1985;
 - (i) failure of the Chumkedima meeting on the 3rd and 4th June; and
 - (j) non-implementation of the decision of this meeting on the 4th June for an immediate cease-fire or even on the morning of 5th June.
- Whether the conflict and the resultant loss of human lives and damage to property could have been averted.

13.2 (i) Fencing taken up by the Nagaland authorities at their Inner Line Permit Check Gate on the 20th of April was wrong. This should not have been done without discussion and prior agreement with the Assam authorities. In fact, Commissioner, Nagaland's reference to his Government about shifting the Check Gate to a point 50 yds. towards the foothills was pending with the State Government. There were also past objections by the Assam authorities to any construction etc.

The entire responsibility for this initial unwarranted and impermissible act lies in this background with Nagaland.

(ii) The seizure of the fencing material on the same day by the Assam Government authorities also added to the tension but cannot be held to be improper in view of the earlier action of the Nagaland authorities.

(iii) Both these actions led to a worsening of relations between the communities and Government functionaries at the border.

(iv) Induction of Nagaland Armed Police to the Check Gate and the consequent induction of a contingent of Assam Armed Police to the area by Assam was avoidable. It added to the tension.

(v) In the situation prevailing after the incidents of 20th April, it was an ill-advised move on the part of the Deputy Commissioner, Wokha to have gone on the 22nd April 1985 to the Merapani Police Station accompanied by four or five of his senior officers without first settling his visit with his counterpart the Deputy Commissioner, Jorhat.

(vi) Had the Deputy Commissioner, Wokha not gone to the Merapani Police Station in the manner that he did, the serious tension resulting from the incident that followed would have been avoided.

(vii) The Assam account of the firing incident of 22nd April is incorrect. G.F. Rifleman, Prafulla Bora was not involved in the firing. The report of the Superintendent of Police, Jorhat, is not correct.

(viii) In all probability, the firing was from the Stengun of ABSI, Mukund Baruah as stated by Nagaland.

(ix) The Stengun was not aimed at the Deputy Commissioner, Wokha, and there is no question of Mukund Baruah having deliberately fired a shot at him as alleged by Nagaland.

(x) The balance of probability suggests that Mukund Baruah's Stengun was either deliberately fired into the air or went off accidentally.

(xi) The account of this incident by the Deputy Commissioner, Wokha, given to his superiors includ-

ing the State Government seems to have been exaggerated and misleading.

(xii) Enquiry by the Assam authorities into Deputy Commissioner, Wokha's allegations about the firing incident was casual and superficial.

(xiii) The firing incident and also the manner in which it was on the one hand enquired into by Assam and on the other presented by the district authority of Nagaland added substantially to the tension.

(xiv) Non-implementation of Commissioner, Nagaland's order contained in his message of 26th April was unfortunate and a further step in the hostile atmosphere that was building up.

(xv) The terms of the Agreement of May 1, 1985 arrived at between Assam and Nagaland at the meeting taken by Inspector General of Police (Border), Assam and attended by the two Deputy Inspectors General were clearly understood by both sides and there was no ambiguity. Insistence on simultaneous withdrawal or dismantling of bunkers by the Assam side were all extraneous matters injected subsequent to the agreement and at the stage of implementation.

(xvi) Implementation of the agreement was frustrated because of the Deputy Commissioner, Wokha who with the tacit support of the political set up was continuously flouting the orders and authority of his superiors.

(xvii) Non-implementation of this agreement was an extremely unfortunate development in this entire episode and would appear to be mainly responsible in bringing about a confrontational attitude on the part of the Assam Government.

(xviii) It was an ill-advised move on the part of Assam to have set up what was described as a Forest Check Gate on the Golaghat-Wokha road on the 26th May.

(xix) The induction of 3 Companies of Assam Armed Police into the Merapani area simultaneously was also an unfortunate move.

(xx) These two steps brought about a qualitative change in the atmosphere very considerably worsening relations between the two communities as well as two State authorities and should have been avoided.

(xxi) This action by Assam resulted in certain steps on the part of Nagaland which were equally avoidable.

(xxii) These steps were the induction of sizeable forces of the Nagaland Armed Police into the Merapani area bringing about a situation where the armed police of the two States were confronting each other in strength. This was another event contributing to the eventual conflict.

(xxiii) The Chumkedima meeting failed mainly because of the reluctance of the Assam authorities to discuss the Forest Check Gate they had set up.

(xxiv) Nagaland seemed to have decided about this time that in the event that the Check Gate was not removed they would use force to remove it.

(xxv) Fighting apparently started as a result of this decision of Nagaland while the meeting was still in session.

(xxvi) Cease-fire agreed to at this meeting on the 4th June 85 could not be brought about mainly because of the reluctance of the Nagaland authorities.

— The role of the authorities in both the States in mobilising and deploying armed police forces including the Village Guards of Nagaland.

13.3. (i) Following the incident of 20th April and 22nd April, Nagaland Armed Police was moved to the Inner Line Permit Check Gate. Counter measures were taken by Assam who also deployed some elements of the Assam Armed Police in the Merapani Police Station. In spite of the instructions of Commissioner, Nagaland of 26th April, Nagaland Armed Police continued at the Inner Line Permit Check Gate apparently under orders of the Deputy Commissioner, Wokha.

(ii) The first induction of the Nagaland Armed Police into the Inner Line Permit Check Gate and then its continued retention seems to have been primarily under orders of the Deputy Commissioner, Wokha. Initiatives on this score at the junior level were taken by 'E' Company Commander Shri Lotha.

(iii) Massive induction of the Assam Armed Police and the Nagaland Armed Police after the 26th May was ordered at the level of the State Governments.

(iv) Mobilisation and deployment of the Village Guards was ordered by the Chief Minister of Nagaland; no authority at the official level was involved.

— Lapses or dereliction of duty on the part of the officials and uniformed forces of the two State Governments.

13.4 (i) There were *prima facie* lapses on the part of S/Shri Lalithara, the Deputy Commissioner, Wokha, Nagaland, B.D. Kharkwal, Inspector General of Police (Border), Assam, M.R. Choudhuri, Inspector General of Police (Training and Armed Police), Assam S. Goswami, Commandant 11th Assam Police Battalion, B. P. Rao, Commandant 3rd Assam Police Battalion, N. C. Dutta, 2nd-in-Command 11th Assam Police Battalion, S. Lushai, Assistant Commandant 11th Assam Police Battalion and S. Talukdar, Assistant Commandant 3rd Assam Police Battalion.

(ii) A detailed enquiry is called for into:

(a) all aspects of the general state of the Assam Armed Police and its performance during the conflict from 4th to 6th June including in particular possible lapses or dereliction of duty on the part of S/Shri B. D. Kharkwal, M. R. Choudhuri, S. Goswami, B. P. Rao, N. C. Dutta, S. Lushai and S. Talukdar.

(b) the behaviour and actions of Shri Lalithara, the Deputy Commissioner of Wokha at the time with reference to the fencing incident of 20th April and non-implementation of various orders and directives of the Commissioner, Nagaland about the withdrawal of the armed police to the pre-20th April position.

CHAPTER XIV

RECOMMENDATIONS

Long Term

14.1 (i) To bring about lasting peace and tranquillity on the borders of Assam and Nagaland, it is necessary that there is no further delay in settling the boundary problem.

(ii) Steps need to be taken urgently therefore to settle the long outstanding claims of Nagaland on some areas including the reserved forests of Assam.

(iii) A Commission equipped with all necessary powers should be set up immediately to go into this matter.

(iv) The findings and conclusions of this Commission should be taken as an award binding on both the State Governments.

(v) A time limit for completion of the Commission's work should be laid down and it should be the Commission's endeavour to adhere to this schedule.

Short-Term

14.2. (i) The Interim Agreements of 1972 were meant to be short-term arrangements between the two States—essentially to maintain peace and tranquillity on the border pending submission of Shri Sundaram's report.

(ii) As a long-term measure, they have been found to be unworkable considering that many of the provisions are practical only in the short-term. Some of the provisions and particularly the manner in which they have been sought to be applied in the long-term have created problems.

(iii) Pending settlement of the border problem therefore, new arrangements need to be worked out defining the status and role of the two States in the area presently governed by the 1972 Agreements.

(iv) These arrangements must recognise irrespective of the merits of the territorial claims of Nagaland,

the unquestioned authority and right of the Assam Government to be in full administrative control of all areas within the existing constitutional boundaries of that State.

(v) Within the frame-work set by this requirement, it should be seen to what extent the provisions of the 1972 Agreements regarding Nagaland's presence in these areas are desirable and practicable

(vi) A Committee consisting of the Union Home Secretary and the Chief Secretaries of Assam and Nagaland should go into this matter and settle the new ground rules.

(vii) The Nagaland Armed Police will under no circumstances enter at any time the areas which are presently governed by the 1972 Agreements as also those in the reserved forests of Diphu, Rengma and Nambor.

(viii) There should be a Standing Committee which should discuss and resolve any problems that arise in these areas. The Committee will also consider the desirability, feasibility and practicability of the border being manned by a central police force.

(ix) The Committee will consist of the Assam Divisional Commissioner, the Nagaland Commissioner, the two Deputy Inspectors General of Police in charge of the border and a representative from the Ministry of Home Affairs. It will meet once in two months and be presided over by the representative of the Ministry of Home Affairs.

(x) Emergency meetings of this Committee should be held when required.

(xi) There should be a six monthly review meeting taken by the Union Home Secretary and attended by the Chief Secretaries and Directors General of Police Inspectors General of Police to review problems on the border.

(R. K. SHASTRI)

APPENDICES



APPENDIX I
SHASTRI COMMISSION OF INQUIRY
ON INCIDENTS RELATING TO ASSAM-NAGALAND BORDER
CONFLICT DURING APRIL-JUNE, 1985

Regulations of procedure under section 8 of the Commissions of Inquiry Act, 1952 and the Rules made thereunder, to be followed by the Commission of Inquiry

Definition

1. (a) 'Act' in these Regulations shall refer to the Commissions of Inquiry Act, 1952.
- (b) 'Rules' shall refer to the Rules made under the Act.

Language

2. The proceedings of the Commission shall be conducted in the English language. Provided that a petition or affidavit in a language other than English can be entertained by the Commission if it is accompanied by an authenticated translation in English.

Official Address

3. Until further orders, the Headquarters of the Commission is at 2nd/3rd floor, Arunachal Pradesh Secretariat, Shillong-793001 and all communications should be addressed to the Secretary to the Shastri Commission of Inquiry on incidents relating to the Assam-Nagaland border conflict till a change in address is notified.

Hours of Working

4. The Office of the Commission will be open from 9.30 A.M. to 1.30 P.M. and 2.00 P.M. to 5.30 P.M. on all days other than Saturdays, Sundays and Holidays as observed by the Central Government. However, the hours during which business may be transacted with the parties and the public shall be from 10.30 A.M. to 1.30 P.M. and 2.00 P.M. to 4.30 P.M. on any working day.

Place of sitting

5. The Commission shall ordinarily hold its sittings at Shillong at such place or places as it may deem appropriate.
6. If it is expedient or necessary in the public interest to hold any sitting outside Shillong, due notice will be given in advance in an appropriate manner.

Time etc. of sittings to be notified

7. The dates, timing and venue of the sittings of the Commission will be notified from time to time.

Public hearings

8. Hearings of the Commission will be open to the public except when the Commission thinks fit to direct that proceedings in respect of a particular person or persons or any specific subject matter shall be heard in camera.
9. Visitors will not be permitted to take photographs of any person (s) inside the Court premises where the Commission holds its sittings.

Affidavits from persons acquainted with the subject matter

10. The Commission may, at any stage of the proceedings, require person(s) who in its opinion, have knowledge of facts relevant to matter under inquiry before the Commission, to file statements of facts or affidavits.

Essential requirements of affidavits

11. Affidavits required by the Commission shall be sworn before a Magistrate of the 1st Class or other authority legally empowered to administer oath.
12. If the affidavit is in a language other than English, it shall be accompanied by a translation thereof in English, duly authenticated by Counsel or a Magistrate of the 1st Class.
13. The Magistrate or the authority before whom the affidavit is sworn, shall make this endorsement thereon :—
"Sworn before me by the deponent who is identified to my satisfaction by..... r/o..... or is personally known to me. The affidavit has been read out in full to the deponent who has signed it after admitting it to be correct, this..... day of.....19 at.....".

Signature of the Magistrate/
Authority.

14. Every affidavit shall be drawn up in the first person and divided into paragraphs to be numbered consecutively, each material statement of fact being made the subject matter of a separate paragraph. The affidavit shall state the description, occupation, if any, and the place of abode of the deponent.

15. Towards the end, the affidavit shall be verified in the following manner :—

"Verified that the statements made in paragraphs.....of the above affidavit are true to my personal knowledge and those in paragraphs.....from information received from.....(disclose source) and believed to be true by me."

16. If such information is derived from any document or record, the particulars and nature of such document and the person in control or custody thereof should be indicated. If any part of the statement in the affidavit is verified from information received, the source of such information should be disclosed. The deponent shall file along with his affidavit a list of documents on which he intends to rely. He shall also file a list of witnesses with their full particulars and addresses, whom he would like to examine in support of his statements in the affidavit. Against the name of each witness the deponent shall indicate briefly the fact or facts, which the witness is expected to prove in his examination, and why instead of oral examination, his examination on affidavit will not suffice.

17. Every affidavit filed shall be accompanied by five copies thereof.

18. If the deponent relies for the whole or any part of his statement in the affidavit on any document, the original document or a duly certified copy thereof shall be filed along with the affidavit. If the original of such a document is not in the possession or control of the deponent, he shall disclose the name of the person with his full particulars who is in custody thereof. In case the document is an official record, the Department or the officer in custody and control thereof shall be named.

Oral Evidence

19. After examination of all the affidavits that may be filed in response to notices issued under rule 5, the Commission may, in the interest of justice, call upon any deponent to lead oral evidence and submit himself to cross-examination. In such event, the affidavit already filed by the person may be treated as a part of his examination-in-chief. No party shall have the right to insist on oral examination of any deponent without the leave of the Commission.

Evidence of person present before the Commission

20. The Commission may, in its discretion, examine any person as a witness who is present before the Commission during the course of any sitting either as a visitor or otherwise, if in the opinion of the Commission, such person appears to be conversant with the facts relating to any of the matters covered by the terms of reference of the Commission or acquainted with any transaction or incident which may have some connection with the subject matter of the inquiry before the Commission.

21. The Commission may at any stage of the proceedings, summon or recall any person who may have been examined as a witness or may have submitted an affidavit or a statement of facts and may put such questions to him as it may think fit and record his further statement. No person shall have the right to cross-examine such person who may have been summoned or recalled in pursuance of the above power but the Commission may in its discretion, allow questions to be put to him for seeking any clarifications.

Refusal to summon an unnecessary witness

22. The Commission shall have the right to refuse to examine any witness if it is of the opinion that the evidence of the witness is irrelevant or unnecessary or if he has been cited for the purpose of delay or vexation.

Mode of recording oral evidence

23. Where the Commission decides to record oral evidence, it shall first record the evidence, if any, produced by the Central Government and then of the State Governments concerned, and, thereafter, that of any other person(s) acquainted with the subject matter of the inquiry.

24. The Commission shall have the right in its discretion, to refuse to call any person for oral examination or cross-examination and, instead, to examine him on affidavit through interrogatories delivered to him.

Provisions of the Evidence Act not applicable

25. Technical rules of the Evidence Act, as such, shall not govern the recording and admissibility of evidence before the Commission. Fundamental principles of natural justice shall, however, be followed.

Recording of statement by authorised person

26. Instead of the Commission personally recording the statement of witnesses, it may appoint a person or persons before whom such submission may be recorded. The Commission may also authorise recording of the statement on a tape-recorder or other similar equipment.

Admission of original documents in evidence

27. Where original evidence and correspondence are in the file of Ministries/Departments of the Central or State Governments and their attached/subordinate offices including government controlled institutions, the Commission may, after inspection of the necessary records and satisfying itself about the authenticity of the evidence/correspondence etc., as the case may be, admit the same in evidence with a view to utilising it for the purpose of contradicting or corroboration of the testimony of any witness or cross-examination of any person.

Registered documents

28. Registered documents either in original or certified copies thereof issued by the appropriate authority shall ordinarily be received in evidence without formal proof. Similarly, official records pertaining to Government Departments, Statutory Bodies, State Undertakings, Co-operative Societies, including office notings, orders, etc., may, subject to any lawful claim of privilege, also be admitted without formal proof unless the Commission in any particular case, requires the same to be proved in any of the modes prescribed by law.

Right of Cross-Examine

29. In the event of oral evidence being recorded, cross-examination shall be allowed to all parties as provided in Section 8-C of the Act.

30. The Commission may, at its discretion, dispose of any issue of fact on affidavits without any oral evidence.

Arguments before the Commission

31. When evidence is recorded, the Commission, after the completion of the recording of evidence will afford an opportunity of addressing arguments, but may restrict the duration of arguments to a specified period for each counsel.

32. The Commission may permit the parties concerned to supplement oral arguments by written arguments.

Order of hearing

33. It shall not be incumbent on the Commission to take up hearing of matters brought before it in any particular order or *ad seriation* in relation to its terms of reference.

34. The Commission may on receipt of statement in response to notices under Rule 5(2) proceed with such of the terms of reference, either singly or in groups as it may deem appropriate.

Authority to sign processess delegated

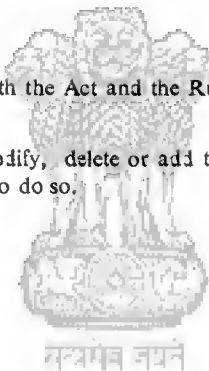
35. The Secretary and Under Secretary to the Commission have been authorised under Rule 4(2) and 4(6) to sign summons and any other process issued by or under the authority of the Commission. Provided that the Commission may authorise any other Officer working under the Commission in a particular case to sign summons or any other process issued by or under the authority of the Commission where it deems fit and proper to do so.

36. The Commission may, either on its own motion or on an application made by any person or party, delete or expunge any matter from any petition, affidavit or other document, or return any document presented to the Commission which is irrelevant or needlessly offensive, scurrilous or scandalous.

Powers to amend, alter etc. regulations reserved

37. Further regulations of procedure, consistent with the Act and the Rules framed thereunder, may be devised/evolved as and when the necessity for doing so arises.

38. The Commission reserves the right to alter, modify, delete or add to any of these regulations of procedure at any time during the inquiry, as and when it considers it necessary to do so.



BY ORDER OF THE COMMISSION

SECRETARY

DATED : SHILLONG

November....., 1985.

APPENDIX II

List of Witnesses of the State of Assam who appeared before the Commission

Sl. No.	No. of Witness	Name & Designation	Date of appearance for oral examination	
			From	To
1.	Assam Witness (AW)—1	Shri B.D. Kharkwal, Ex-Inspector General of Police (Border), Assam. Now on deputation with Government of India.	7-4-86 28-7-86	8-4-86 28-7-86 (re-called)
2.	AW—2	Shri B.K. Gohain, Ex-Additional Deputy Commissioner (Border), Jorhat. Now Deputy Secretary, Home Department, Assam, Dispur.	17-4-86	17-4-86
3.	AW—3	Shri C. Barua, Ex-Deputy Commissioner, Jorhat. Now Director of Rural Development.	28-4-86	29-4-86
4.	AW—4	Shri A.K. Mallik, Formerly Superintendent of Police, Jorhat.	13-5-86	13-5-86
5.	AW—5	Shri M.M. Sagar, Formerly Deputy Inspector General of Police (Eastern Range), Jorhat, Assam.	16-5-86	16-5-86
6.	AW—6	Shri R.N. Muhuri, Commissioner (Upper Assam Division), Jorhat.	17-5-86	19-5-86
7.	AW—7	Shri M.S. Pangte, Formerly Commissioner (Upper Assam Division). Now Commissioner (Northern Assam Division), Assam.	21-5-86	22-5-86
8.	AW—8	Shri P.V. Sumant, Deputy Inspector General of Police (Eastern Region), Jorhat, Assam.	24-6-86	26-6-86
9.	AW—9	Shri S. Doley, Divisional Forest Officer, Golaghat.	27-6-86	27-6-86
10.	AW—10	Shri A.K. Palit (Retired). Formerly Chief Secretary, Assam.	14-7-86	15-7-86
11.	AW—11	Shri J.S. Pathak, DGP. Now Director General of Police (Housing), Assam.	19-8-86	19-8-86

APPENDIX II

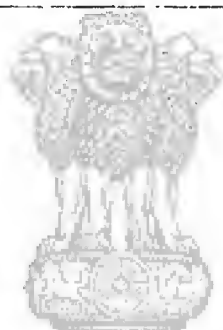
List of Witnesses of the State of Nagaland who appeared before the Commission

Sl. No.	No. of Witness	Name & Designation	Date of appearance for oral examination	
			From	To
1.	Nagaland Witness (NW)—1	Shri N. Jakhalu, Commissioner, Nagaland.	16-4-86	17-4-86
2.	NW—2	Shri Nungshiliba Ao, Deputy Inspector General of Police (Headquarters) Nagaland.	18-4-86	18-4-86
3.	NW—3	Shri Lalthara, the then Deputy Commissioner Wokha and at present Commissioner of Taxes and Excise, Nagaland.	30-4-86	2-5-86
4.	NW—4	Shri M. Sithou, Deputy Inspector General (Nagaland Armed Police & Fire Service), Nagaland.	15-5-86	15-5-86
5.	NW—5	Shri T.M. Wati, Commandant, 1st Nagaland Armed Police.	15-5-86	15-5-86
6.	NW—6	Shri Shurhiu, Deputy Inspector General (Border), Nagaland (Retired).	20-5-86	21-5-86
7.	NW—7	Shri Zambemo Lotha, Superintendent of Police (Border), Nagaland (Transferred) Now Superintendent of Police, Tuensang.	23-6-86	23-6-86
8.	NW—8	Shri M. Yanthan, Sub-Divisional Officer (Civil) Bhandari.	26-6-86	26-6-89
9.	NW—9	Shri Subong Ao, Border Magistrate, Merapani.	27-6-86	27-6-86
10.	NW—10	Shri K.L. Watts, Formerly Inspector General of Police, Nagaland.	16-7-86	18-7-86
11.	NW—11	Shri Z. Lotha, Officer—Incharge Bhandari, Police Station.	30-7-86	30-7-86
12.	NW—12	Shri Ron Zamo Lotha, Contractor, Wokha Distt.	30-7-86	30-7-86

APPENDIX II

List of Commission Witnesses

Sl. No. of Witness No.	Name and Designation	Date of appearance for oral examination	
		From	To
1. Commission Witness—1 (CW)	Shri J.N. Mathur, Ex. Comdt. 48th Bn. CRPF & Sector Comder, D-Sector, Golaghat (Now in Punjab).	29-7-86	29-7-86
2. CW—2	Shri Chander Bhan, Deputy Superintendent of Police, 48th Bn., CRPF (Now posted in Punjab).	29-7-86	29-7-86
3. CW—3	Shri M.R. Choudhury, Formerly Inspector General of Police (Training & Armed Police).	30-7-86	30-7-86
4. CW—4	Shri S.R. Arya, Joint Secretary, Ministry of Home Affairs, Government of India, New Delhi.	20-8-86	20-8-86
5. CW—5	Shri K.K. Baruah, Former Secretary (Forest) Assam, Now Secretary Public Enterprise, Guwahati, Assam.	20-8-86	21-8-86
6. CW—6	Shri I. Longkumer, Chief Secretary, Nagaland.	21-8-86	21-8-86



सत्यमेव जयते

APPENDIX III

Documents consisting of affidavits, counter affidavits etc. filed by the State of Assam

Volume No.	Subject	No. of pages including annexures
A—I	A memorandum on behalf of the State of Assam.	178 pages
A—II	A counter-memorandum on behalf of the State of Assam to the Statement/affidavit filed on behalf of the State of Nagaland.	157 pages
A—III	Affidavits of Official Witnesses on behalf of the State of Assam.	378 pages
A—IV	Affidavits of Non-Official witnesses on behalf of the State of Assam.	145 pages
A—V	Part-I Documents regarding injuries/death of persons, loss and damage to properties, relief and rehabilitation etc.	141 pages
A—VI	Part-II W.T. Messages, correspondence, letters etc. between the Govt. and Officers.	343 pages
A—VII	Part-III(A) Important documents concerning Assam-Nagaland Border from 1972—1982 including minutes of meetings held at various level from 1979—1982.	158 pages
A—VIII	Part-III(B) Important documents concerning Assam-Nagaland Border (Supplement). Minutes of meetings held at various level from 26-5-83 to 30-6-85.	57 pages
A—IX	Part-III(C) Gist of incidents in Assam-Nagaland Border from 1972—1985.	72 pages
A—X	Photostat copy of file No. PLB-43/63 maintained by the State of Assam.	418 pages
A—XI	Photostat copy of file No. PLB-43/63/part maintained by the State of Assam.	50 pages
A—XII	Affidavit filed by Shri Hiranya Kumar Choudhury, Conservator of Forest, Eastern Assam Circle, Jorhat, Assam.	177 pages.

APPENDIX III

Documents consisting of affidavits, counter affidavits etc., filed by the State of Nagaland

Volume No.	Subject	No. of pages including annexures
N—I	Statement/affidavit on behalf of the State of Nagaland.	250 pages
N—II	Counter affidavit on behalf of the Government of Nagaland against the Assam Governments' affidavit submitted to the Commission of Inquiry at Shillong.	125 pages
N—III	Affidavits of official and Non-official witnesses filed on behalf of the Government of Nagaland by seventeen individuals	99 pages
N—IV	Affidavits of Official and Non-Official witnesses filed on behalf of the Government of Nagaland by seventeen individuals.	99 pages
N—V	<i>Volume-I</i> Major violations of the Interim Agreements, 1972 and the Agreements, 1979 committed by the authorities of Assam.	364 pages
N—VI	<i>Volume-II Annexures</i> Major violations of the Interim Agreements, 1972 and the Agreements, 1979 committed by the authorities of Assam.	200 pages

APPENDIX III

Files/documents filed on 7-4-86 by the State of Assam

Sl. No.	File No.	Subject matter	Paging number of correspondence
1	2	3	4
	<i>SP, Jorhat</i>		
1.	C.85/BA/D <i>SDO(C), Golaghat</i>	Merapani incident 1985	1—364
2.	GBA 1/81-82	Correspondence with Magistrate Merapani	1—481
3.	GBA 1/85/(Pt.)	Incoming from Magistrate Merapani Border Br.	1(a)—84
4.	GBA 1/85/Pt. I	Incoming from higher authority Border Br.	1—31
5.	GBA 1/85/Pt. II	Incoming from higher authority	1—177
6.	GBA 2/81	Correspondence to DC/ADC (B) Jorhat	1—525
7.	GBA 2/81-82/Pt. I	Correspondence with DC/ADC(B) Jorhat and SDO's Office, Golaghat	1—571
8.	GBA 2/81-83/Pt. II	Incoming from higher authority	1—542
9.	GBA 2/83-84/Pt. II	Incoming from higher authority	1—217
10.	GBA 2/84/Pt. I	Incoming from higher authority	1—389
11.	GBA 3/Part I/81-82	Incoming from EAC (B)/SPR & SDC-SPR	1—450
12.	GBA 3/84 Pt. I	Incoming from EAC (B)/SPR & SDC-SPR	1—452
13.	GBA 3-Pt. II/81-82	Incoming from Magistrate, Panjan	1—356
14.	GBA 3-Pt. III/81-82	Incoming from Magistrate, Rangajan	1—120
15.	GBA 3/84 Pt. IV	Incoming from Magistrate, Uriamghat	1—512
16.	GBA 5/85/Pt. II	Correspondence with EAC(B) SPR	1—170
17.	GBA 8/85/Pt. II	Correspondence with Uriamghat	1—107
18.	GBA 4/84/Pt. I	Incoming correspondence with Police/CRPF Sector	1—740
19.	GBA 4/84 Pt. II	Incoming correspondence with Police/CRPF	1—521
20.	GBA 4/84 Pt. III	Incoming from Police CRPF/Sector Commandant	1—697
21.	GBA 4/84 Pt. IV	Incoming from Police, CRPF/Sector Commandant.	1—767
22.	GBA 2/85 Pt. II	Incoming from Police	1—611
23.	GBA 4/85	Correspondence with Forest Deptt.	1—38
24.	GBA 8/81-82	Correspondence with forest	1—192
25.	GBA 6/81-82-83	Incoming & outgoing correspondences from Nagaland Government	1—130
26.	GBA 6/81-82-83	Correspondence with Nagaland Govt.	1—20
27.	GBA 7/81-82-83	Misc. correspondences	1—215
28.	GBA 7/84	Misc. correspondence	1—194
29.	GBA 9/81-82/83	Correspondence with Sarupathar Sector	1—271
30.	GBA 12/81-82	Orders & directions from Govt. regarding demarcation and settlement	1—7
31.	GBA 14/81-82	Nagaland Election	1—66
32.	GBA 19/84	Brief notes of Assam Nagaland Border problem	1—63
33.	GGC/8/80	SDO's reply on Merapani Sector	1—184
34.	GGC 8/80 Pt. I	Assam Nagaland Border Matters—Merapani Sector	1—270
35.	GGC 8/81/Pt.	ADC Border in Merapani	1—69
36.	GGC/8/80/Pt. I	From Magistrate Merapani	1—222
37.	GGC 8/80/Pt. I/(A)	All Police/Bn/Sector/CRP in Merapani Sector	1—22
38.	GGC 8/80/Pt. II	Assam Govt./Commr/DC/DIG etc. in Merapani Sector	1—47
39.	GGC 8/80/Pt. III	Assam forest in Merapani Sector	1—29
40.	GGC 8/79/Pt. IV	Road construction in Merapani Area—Incident of 21/5/79 and 29/5/79	1—56
41.	GGC 8/80/Pt. V	Nature of land dispute in No. 3 Doldoli area under Merapani BOP between Assamese settlers and Sarbo Ingti G.B. of Changkhati Mikir Village	1—8
42.	GGC 8/80/Pt. VI	Merapani Sector Miscellaneous	1—38
43.	GGC 8/80/Pt. VII	Papers relating to houses burnt by Nagas at Cibangpar area under Veluguri BOP in 1977.	1—39
44.	GGC 9/80/81	SDO Golaghat's reply in SPR Sector	1—148
45.	GGC 9/80/Pt. I	ADC (B) Tpt. in SPR Sector	1—131
46.	GGC 9/80/81/Pt. II	Assam side signal from DC/COMMR./Govt/DIG etc.	1—45
47.	GGC 9/81/Pt. III	From Forest on SPR Sector	1—95
48.	GGC 9/80/Pt. IV	Magistrate R/jan in SPR Sector	1—30
49.	GGC 9/81/Pt. V	Magistrate U/ghat & P/jan in SPR Sector	1—38
50.	GGC 9/81/Part VI	All Nagaland Officers on SPR Sector	1—15
51.	GGC 9/80/Pt. VII	Signals from all PC-/C/O-SDPO-Addl, SP-SP i/c Dy. SP etc. of Assam (SPR Sector).	1—13

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52.	GGC 9/80/Pt. VIII	EAC (B) SPR.	1—80
53.	GGC 10/80	Construction of roads, bridges etc. in Border Areas (Merapani Sector to Sarupathar Sector)	1—58
54.	GGC 10/80 Pt. I	Signals from Commissioner & Depcom	1—126
55.	GGC 10/80-Pt.	Eviction operation by Forest Dept. at Namber South and Rengma RFs.	1—127
56.	Nil.	Correspondence made from SDO(C)'s Confidential Branch	1—47
	<i>DGP Assam</i>		
57.	C 190/84	Assam-Nagaland Border Affairs	1—208
58.	C 190/84 Vol. I	Assam-Nagaland Border Affairs	1—230
59.	C 190/84 Vol. II	Assam-Nagaland Border Affairs	1—354
60.	C 190/84 Vol. III	Assam-Nagaland Border Affairs	1—192
61.	C 90/85	Force deployment on Assam-Nagaland Border during Merapani incident	1—127
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62.	DER/298/BI/D	Incident in 'D' Sector Golaghat from 1-1-85	377—676
63.	DER/298/BI/D	Incident in Merapani Sector from 4-6-85	1—205
64.	DER/298/D/84	Deployment/Withdrawal of force from ANB	407—481
65.	DER/298-85/Pt. 1985	Merapani incident	1—62
	<i>DFO Golaghat</i>		
66.	40	Incident of Merapani	1—123
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67.	FG 46/22/SIB/Part	Encroachment in R.F. bordering Nagaland	1—672
	<i>Commissioner Upper Assam</i>		
68.	CAU/CON 24/85/Pt. I	Assam Nagaland Border Situation under 'D' Sector (HQ. Golaghat)	1—343
69.	CAU/CON 24/85-/Pt. II	Assam Nagaland Border Situation under 'D' Sector Relief etc. Measures	1—327
70.	CAU/CON 24/85	Assam Nagaland Border Situation under 'D' Sector (HQ. Golaghat)	1—319
71.	CAU/CON 24/85 Pt. III	Assam Nagaland Border Situation under 'D' Sector	2—180
72.	CAU/CON 43/85	Correspondence relating to Meetings etc. on Assam Nagaland Border situation	1—292
73.	Nil.	Minutes of the meetings between Commissioner of Upper Assam Divn., Jorhat and Commissioner, Nagaland from 1979 to 1986	Pages not marked serially
	<i>DEPCOM Jorhat</i>		
74.	JBA 2/85	Border Matter relating to Merapani Area (Under 'D' Sector)	1—157
75.	JBA 2/85/Pt.	Border incidents under 'D' Sector Merapani	1—245(a)
76.	JBA 2/85/Pt A	Incident at Merapani Area	1—259
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80.	JBA 3/84/PT	Border incident under the jurisdiction of Magistrate Uriamghat	1—269
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81.	JBA 5/84/PT	Border incident under the jurisdiction of EAC (B) Sarupathar	1—154
82.	JBA 2/83	Border matters relating to Merapani Area	1—334
83.	JBA 34/84-85	Minutes of the Monday meeting relating to Merapani Sector	1—129A
84.	No number	Original Minutes of DC level meeting w.e.f. 2/2/81 to 26/9/85	1—78
	<i>DIG(B) Gauhati</i>		
85.	IGP/B/91 Pt. I	Crime and incident in Assam Nagaland Border under 'B' Sector HQ. Golaghat	1—405
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87.	IGP/B/123	Confidential correspondence regarding Assam Nagaland Border Affairs	1—5
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89.	MBR 1/85/Pt.	Outgoing office of the Magistrate Merapani	1—95
90.	MBR 2/81/82/83/84	Incoming from higher authority, Magistrate Office Merapani	1—642
91.	MBR 1/85/Pt. II	Incoming from higher authorities to Magistrate Merapani	1—58
92.	MBR 1/85/Pt. I	Incoming from higher authority to Merapani Border Branch	1—27
93.	MBR 3/83/Pt. II	Incoming sitreps from Police Magistrate Office Merapani	1—481
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95.	MBR 3/84/Pt. II	Incoming rom Police (sitreps) Magistrate Office Merapani	1—636
96.	MBR 2/85/Pt. II	Incoming from Police	1—308

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97.	MBR 8/85	Minutes of Magistrate level meeting Merapani	1—171
98.	MMP 1/79	WT Inwards (Jan. 79 to Dec. 79) Magistrate Office Merapani	1—130
99.	MMP 1/79	In Message	1—60
100.	MMP 2/79	Out message	1—45
101.	MMP 2/81	(WT Inward) Magistrate Office Merapani	1—511
102.	MMP 3/79-80	Border land disputes—(1979-81) Magistrate Office Merapani	1—207
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104.	MMP 3/81	Public petitions	1—126
105.	MMP 4/(79)	Public Petitions	1—75
106.	MMP 4/80	K. Oil & Salt, Rice etc. Magistrate Office Merapani	1—227
107.	MMP 5/79-80	Instructions—1979-80	1—24
108.	MMP 5/80	Election	1—28
109.	MMP 6/80	Correspondence with Forest & PHE & Excise	1—119
110.	MMP 6/81	Public Meeting	1—3
111.	MMP 8/80	Correspondence with Nagaland Magistrate	1—68
112.	MMP 8/81	Basic amenities & development	1—35
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117.	MMP 12/80	Gaon Panchayat	1—95
118.	MMP 13/80	Public petitions	1—279
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121.	MMP 15/80	WT (Inward)	1—99
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123.	MMP 17/80	Sankheti Mikir Village	1—11
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125.	MMP 19/80	Relief etc.	1—54
126.	MMP 21/80	Merapani Forest Village	1—17
127.	MMP 20/80	Village Defence Party	1—9
128.	MMP 22/80	Mondal's Report	1—12
129.	MMP 24/80	Nagaland M.S. Farm Bhalowguri	1—18
130.	MMP 29/80-81	Meeting Magistrate level & correspondence with NL Magistrate	1—42
131.	MMP 34/80	Enquiry and report	1—149
132.	MMP 35/80	Veluguri Check Gate	1—256
133.	MMP 36/80	Confidential	1—117
134.	MMP 42/80	P.W.D.	1—12
135.	MMP 43/80	Office order	1—46
136.	Nil.	Supdt. of Police, No. 1 Spl. Branch, Gauhati Certified copies of secret documents connected with Merapani incident.	Said to contain 19 corres- pondence

APPENDIX III

Files/Documents filed on 7-4-86 by the State of Nagaland

Sl. No.	File No.	Subject matter	Paging No. of correspondence
1	2	3	4
<i>Police Deptt.</i>			
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4.	DIGBN/D-2(I)/85 Vol. I	Merapani, Incident Deployment	1—266
5.	Photo Album	Photographs taken on 8-6-85	1—80
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6.	Booklet (2 Volumes)	Major violation of the Interim Agreements 1972 and the Agreements, 1979 committed by the authorities of Assam	1—364 (Vol. I) 1—200 (Vol. II)
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7.	BA-59/AN/84	Assam-Nagaland boundary affairs concerning Sector 'B' adjoining Wokha Distt. and general correspondence thereof	2—229
8.	BA-5/1/85	Allied matters of Sector 'B' adjoining Wokha Distt	1—143
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11.	CON 34(2)(1) 85	Correspondence relating to Merapani incident from 20-4-85 to 7-6-85	1—403
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12.	VG/Est-23/85-86	Correspondence regarding Merapani V.G. Operation	1—73
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14.	CON 26/85(I)	Merapani Border incidents	1—342
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GOVERNMENT OF NAGALAND
OFFICE OF THE DEPUTY INSPECTOR GENERAL OF POLICE (BORDER)
CHUMUKEDIMA, NAGALAND

No. DIGPOL/BA-2/85/

Dated, 26 April, 1985.

To

The Adviser,
Border & Ex-Officio
(Secretary, Border Affairs),
Nagaland : Dimapur.

Sub : ENQUIRY REPORT

Sir,

I am directed to forward herewith a copy of an enquiry report in connection with 20/4/85 and 22/4/85 incidents at Assam Nagaland border at Merapani for favour of your information.

Yours faithfully,

Superintendent of Police (Border)
Nagaland, Chumukedima

Investigation Report on Merapani on the incident at Merapani on 20th and 22nd April, 1985

1. Background

During the insurgency period, the Merapani Checkpost was manned by Assam Rifles having a strength of one platoon. Later on the post was occupied by District Police and also Veterinary department for checking Innerline Permit and quarantine checking respectively. Also in the Interim agreement it was mentioned that the check-post will be manned by 7 UB Policemen. In the early part of 1980, the Government of Nagaland went to put up some basha type accommodation for the staff however, the Assam Government objected and construction could not be completed. The matter was taken up repeatedly at Commissioner's level meeting and at one stage the DIGs of both the States namely, Shri R.S. Jamir and Shri Shrivastava were entrusted to found out the actual requirement of building for accommodating Nagaland officials and a report was submitted by the above officers to be decided in the Commissioners' level meeting. At one stage Shri Jaffa, the Commissioner, UAD agreed to let this Government complete the building, however, we could not carry out the construction in time. The plea put up by the Assam Government is that the land occupied by this Check-gate belongs to an individual and the said individual has filed a case in the Court and thus, the administration could not take any decision independently. Thus the matter could not be settled till today. In the last several Commissioner's level meetings the Assam Government have repeatedly put up their objections as Veterinary department was putting up brick walling on their existing building. However, we have been telling them that such minor matters should not stand in the way of maintaining peace between the two neighbouring States. However, in the last Commissioner's level meeting the Commissioner, UAD, Jorhat and his party insisted that our Check-gate should be shifted about 50 yards towards Nagaland side, of which the Commissioner Nagaland has intimated them that the Government of Nagaland, will consider their request and will be intimated them in due course.

2. Actual incident on 20-4-85

The A.H. & Vet., Department of Nagaland allotted contract work to Shri Ranzamo of Bakti town to put up barbed wire fencing around their department buildings and the construction started on 20-4-85. He could put up about 38 Angle iron posts when around 1130 hours on that day, the public of Merapani (Assam) along with AP personnel under the command of *ABSI Maken Bora* came to the check-gate and started removing the angle iron post which were put up by the contractor. The said ABSI (post commander Merapani AB post) corked his stengun and pointed it at the *Police personnel, (NP) and they were threatened, if they do anything he will fire at them.* In the meantime O.C. Merapani Police Station (Assam) and O.C. Bhandari Police Station arrived and tried to pacify the public. The O.C. Merapani P.S. (Assam) requested the public to keep the angle iron posts where from it was removed. However, *ABSI Maken Bora forced the public to carry them to the Police Station.* Thus the fencing materials (iron post) numbering 38 were taken to Police Station but no seizure list or any case was registered that date. In the evening the same day, the SDO Bhandari, Border Magistrate Merapani (Nagaland), Coy Commander 4 NAP Coy Marapani, O.C. Bhandari P.S. visited the area and requested O.C. Merapani PS (Assam) to return the fencing materials and also assured them that no further fencing will be undertaken till some decision is taken by the higher level. However, it was not returned.

3. Incident on 22-4-85

(a) The D.C. Wokha, SP Wokha, SP (Border) Nagaland along with various officials from Nagaland side went down to Merapani Police Station (Assam) on getting report of the incident on 20-4-85 and enquired about the seizure of materials as no seizure list

nor any regular case was reported to have been made. The O.C. Merapani Police Station (Assam) was out of station and only the 2nd O.C. was present in the P.S. On query, the D.C. was told by the 2nd O.C. of the P.S. that the seized materials were taken to Golaghat. When the D.C. Wokha went out to attend to nature's call outside the main Police Station building, he found the fencing materials were covered with a blanket. So he called the 2nd O.C. of the P.S. and while the D.C. was rebuking the 2nd O.C. of the P.S. one shot was fired from his back.

(b) One section of AP personnel were attached to the Police Station from the nearest AP Post since 20-4-85 onward. When the D.C. Wokha and his party entered the Police Station compound, all the A.P. personnel were all in stand-to position around the hidden fencing materials. When the D.C. accidentally found the hidden fencing materials, and when lifted up the blankets which conceals the seized fencing materials, the ABSI Maken Bora ordered his men 'Lead', and he himself also cocked his Stengun. The CRPF Sector Commander Shri Chandra Bhan, who is also the sector commander of Merapani area was also present along with SP (Border) Nagaland and others. While everybody were looking at the seized materials, ABSI Maken Bora fired his Stengun in the direction of the D.C. though it was seen by the O.C. Bhandari P.S. that the firing was aimed above. No other person did see actual firing except by the O.C. Bhandari P.S. though many senior officers were present.

(c) After the firing, the ABSI Maken Bora ran away towards 'Nullah' and when he was called back by SP (Border) Nagaland and all officers, he refused to come back saying that if anybody come near him he will fire at them and he was ready to fire with cocked Sten-gun in his firing position. Shri Chandrabhan, Asstt. Comdt. CRPF was sent to bring him back, however, he was also told that if come near he will be fired at so they could not bring him back and he disappeared to his post. Hav. Raman Hazarika of AP Post, who come along with ABSI Maken Bora as 2-i/c of the AP Party was asked to check the arms of all Assam Police personnel there, in presence of the Sector Commander and the SP (Border) Nagaland and it was done so. But it was found that none of the AP Jawans fired any round as their rifles/ammunitions were all found in tact. Thus, the firing was done by the ABSI Maken Bora only. The actual intention of firing by the ABSI could not be ascertained definitely as to whether it was intended to fire at the D.C. or to threaten the Nagaland officials. However, it is seen that the Nagaland officials behaved very bravely and handled the situation without any commotion and their reaction is very highly commendable.

(d) In the meantime, the tension was mounting on both sides as the Assam public were gathering on the western side of the bridge while Naga public were gathering on the Nagaland side of the bridge. Only the CRPF personnel who were present could keep the public under control and when the firing sound was heard from the Police station, panicky struck on both sides and confusing exists. However, nothing untoward happened. In the evening, the ADC Jorhat, SP Jorhat, SDPO Golaghat and Border Magistrates all arrived Merapani and discussion held on the spot, it was agreed that the seized materials will be kept there and negotiations held later.

(e) *Deployment of force :*

(i) In view of the prevalent situation in the area, and for the safety of Civil Police personnel and Veterinary Department personnel, the DC Wokha ordered that two sections of NAP should stay in the Check-gate till tension is defused.

(ii) *Situation as on 25-4-85 :*

2. Section of NAP boys are stationing in at the Check-gate camps as ordered by DC and they started constructing one 'defence bunker' facing the Merapani Police Station (Assam). Thus, the DIG (ER) Jorhat has raised objection of which a copy of the message is enclosed at Appendix 'A'.

(iii) Again on 24-4-85 evening some Naga Students Federation members came to Merapani to see Champang Drilling site around 2300 hrs. via Golaghat. It is reported that they fired 3 rounds on the way between Furkating and Merapani and shot two dogs for their consumption at Merapani. Thus, the Assam public, who are living on the road side and at Marapani are in great panicky and all the shops along the road were closed on 25th April, 1985. However, things appears to be normal.

4. *Observations*

- (a) High-handedness on the part of ABSI Maken Bora needs serious retaliation from our side on the incident on 20-4-85.
- (b) Firing by ABSI at or intimidating DC needs very serious action at the highest level.
- (c) The action of AP personnel for removing the fencing materials without any complaint from the Police Station was illegal on the part of the Assam Government.
- (d) No seizure list was given.

5. *Co-ordination Meeting*

A meeting was fixed by me with DIG (ER), Jorhat, Commandant 48 CRPF and myself at Merapani and reviewed the situation and tried to defuse the existing tension on 25-4-85 at 1100 hrs. While discussing about the latest situation, the DIG (ER) Jorhat along with SP, Jorhat suggested that to defuse the prevailing situation, the NAP who are now stationed at the Check gate are withdrawn immediately and the Defence Bunker put up by NAP personnel is dismantled. Also pre 20-4-85 position is strictly maintained till the next Commissioner's level meeting is held. I have agreed provided the fencing materials are returned. However they could not agree to this and we could not come to any agreement. However, on our suggestions, the administration is advised to organise peace committee of both the OSD Magistrates and 2 public leaders from each State w.e.f. 25th April, 1985 of which A.D.C. Jorhat has agreed to undertake responsibility of organising this Peace Committee w.e.f. 25th April, 1985.

Sd/-

(SHURHIU)

Deputy Inspector General of Police (B),
Nagaland, Chumukedima.
26-4-85.

APPENDIX V

File No. Con. 34(2)/85

CRASH

W/T

TO S.P. (BORDER) CAMP M/PANI
FROM D.I.G. (BORDER) CMD.

NO. DIGPOL/BA-5/85/438 DT 2/5 (.) GOVT APPROVES OUR LINE OF DISCUSSION (.) CARRY OUT FOLLOWINGS (.) ON ARRIVAL OF ASSAM OFFICER (POLICE) (.) DISMANTLE BUNKERS (.) TWO(.) TAKE OVER F/MATERIALS(.) THREE(.) WITHDRAW ALL NAP PERS TEMPORARILY ATTACHED TO CHECK GATE(.) IF CONVIENT TO YOU PLSE RETURN TO HQ URGENTLY(.)

(SHURHIU)
D.I.G.P. (BORDER)

Copy to :—

- (1) Commissioner Nagaland.
- (2) D.C. Wokha.
- (3) Tiger 4 NAP.
- (4) Coy. Commander 4th NAP M/Pani.

(SHURHIU),
D.I.G. of Police (Border),
Nagaland, Chumukedima.



96) 81
94.5

NR 25/26

To: DGO (B) CMD/DA WKA
 W= COMBT 4 NAP/SP WKA
 W= E.ROY COMBR M/Pani
 NO. 4/E/BOR/84314/50 Ref. yr
 S/NO. Nil DIS/50 we are started for
 dismember of buslines today
 but 9:30am police not taken any
 action from their side only combr
 in for further action (S/normal)



सत्यमेव जयते

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R100 - 94)

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 imp. condit y waf / sp w/ly
 for - E cap condit m/pans

No. 4/E/13DR/85 225/50

S/med for sp (B) cond reproduced
 below @ Buh @ Dig. Poli/35 - 5/85 d/ly
 s/s @ Since govt have approved
 for w/ly drawal of map for c/gate
 Dig (B) wants that the order should
 be complete @ whether assign govt-
 w/ly draw. their force or not
 is not our concern @ you may
 w/ly draw the map accordingly. @
 Dismentling of bunker / ~~firearm~~
 Paramechan could be done gradually
 @ tho the iron roads be collected
 and keep w/ly map post @ for
 yr info. and w/a psc @ w/ly
 as per order of Dig (B) and the
 are withdrawing their force for
 w/ly hand c/gate on 6/5/85 @

1835/5
 0835/6

File No. Con. 34(2)/85

765/86

110

To D.C. WKA/S-P. WKA

From DIG (B) CMD

Re Commr Xon A

No CCB. 3/82 D + 6/5 I understand that the dists Border Assam and Nagaland have jointly decided simultaneous withdrawal of Armed Assam Police and Nagaland Police Personnel from Assam Police Stn and N/land Check Post at Merapani. If such combined decision has already been made with withdrawal of the two police forces should be implemented on a definite date to be fixed by police authorities of both States under supervision of senior police officers of both States. No useful purpose will be served by further confrontation of forces and as such withdrawal should be arranged mutually and confirm to us.

1730
 2028/16
 [Signature]

CONFIDENTIAL

A meeting was held in the office chamber of the Chief Secretary, Nagaland to discuss about the latest border situation at Merapani. The Commissioner, Nagaland, Home Commissioner and Inspector General of Police attended the meeting. On the copy of the situation report submitted by the Deputy Commissioner, Wokha, the Chief Minister minuted that we should also send the Police Force to Merapani in view of the induction of two Coys of Assam Police in that area. The induction of Police Force is intended not to confront the Assam Police but to take similar action as they have done.

The I.G.P. had pointed out that the Police Force deployed in the Merapani area had been further strengthened during the last two days raising the strength to more than a Coy. He also expressed his difficulty in arranging the additional two Coys of NAP for the purpose. He explained that the extra force has been moved today to Rangapahar in view of the developing situation there. Also there has been firing by an unidentified person at a Police Constable yesterday between Modniphoma and Zarnapani as a result more force has to be sent to Dimapur. However, he felt that he will be able to deploy one Coy of NAP by pulling out the force from elsewhere. The Commissioner, Nagaland suggested that the existing one Coy force at Merapani may be withdrawn and stationed at Bhandari and in view of this force, the two Coys of NAP may be inducted. This suggestion was made by him in view of the fact that this force had been staying there for quite sometime. He also pointed out that the Dy. Commandant should be sent along with the two Coys of NAP and any action to be taken by the NAP deployed there should have the approval of the IGP. It was found in the past days that confusion was created because of instructions being issued from various sources. These arrangements are being made on temporary basis pending discussion to be held between the two Commissioners of Assam and Nagaland on 3rd June, 1985 at Chumukedima. Further follow up action will be taken on the basis of the agreement which is to be arrived at between the two Commissioners.

Copy to :—

Commissioner, Nagaland.

(I. LONGKUMER)
Chief Secretary, Nagaland.
29th May, 1985.



File No. CCB 3/82 Vol. II

W/T MSG

MOST IMMEDIATE—29/5

TO : DIG(B) CDM
: DC WOKHA/DIG MERAPANI
FM : COMMR KMA

NO. CCB. 3/82 DT 29/5/85(.) REFER OUR WT MSG EVEN NUMBER DT 28/5/85 ADDRESSED TO COMMR UAD JRT REGARDING ARRANGEMENT OF WITHDRAWAL OF POLICE FORCES FROM MERAPANI AND ALSO YOUR WT MSG OF EVEN NUMBER DATED 28/5 ON THE SAME(.) GOVT HAVE ALREADY POSTED ONE DIG NAP AT MERAPANI EFFECTIVE FROM LAST NIGHT TO TAKE CHARGE OF THE SITUATION WITH THE SPECIFIC INSTRUCTION THAT NO LOCAL AUTHORITY WILL INTERFERE IN MATTERS RELATED TO MOVEMENT OF NAP IN THE AREA AND WITHDRAWAL OF FORCES IF THIS CAN BE ARRANGED(.) SINCE THE SITUATION IS BECOMING BEYOND CONTROL YOU SHD IMDTLY PROCEED TO MEET YOUR COUNTERPART IN ASSAM AND ARRANGE SIMULTANEOUS WITHDRAWAL OF BOTH FORCES RESTORING TO POSITION OF PRE 20TH APRIL AS ARRANGED EARLIER(.) TRIFLING MATTERS LIKE FENCING OR TEMPORARY ROOFING BEING DONE BY EITHER STATE FORCES RECENTLY MAY BE LEFT UNDISTURBED AT PRESENT AND THESE SHD NOT CAUSE ANY OBSTRUCTION TO THE WITHDRAWAL ARRANGEMENT(.) IF ARRANGEMENT FOR WITHDRAWAL COULD BE MADE DIGS (BORDER) OF BOTH STATES MUST PERSONALLY SUPERVISE WITHDRAWAL AND YOU SHD CONTACT DIG POSTED AT MERAPANI(.)

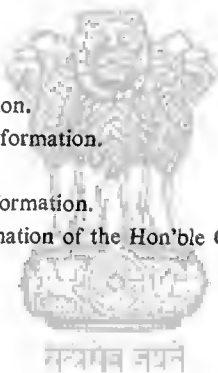
NO. CCB. 3/82

Dated Kohima, the 29th May, 1985

Copy to :—

1. The O.C. Police Radio, Kohima for transmission.
2. The Chief Secretary, Nagaland, Kohima for information.
3. The IGP, Nagaland, Kohima for information.
4. The Adviser, Border Affairs, Dimapur for information.
5. The Secretary to the Chief Minister for information of the Hon'ble Chief Minister.

(N. JAKHALU)
Commissioner



File No. CCB. 3/82 (Vol. II)

CONFIDENTIAL

GOVERNMENT OF NAGALAND
OFFICE OF THE COMMISSIONER : NAGALAND : KOHIMA

No. CCB. 3/82 (Vol. II)

Dated Kohima, the 19th June' 85.

To

The Home Commissioner,
Govt. of Nagaland,
Kohima.

Sub :—MERAPANI INCIDENT OF 4TH TO 6TH JUNE, 1985.

Sir,

I would like to refer your U/O No. CON. 86/85 P/239 dated 13th June' 85 on the above quoted subject and to say in supersession of this office letter No. CCB. 15/82 P/241C dated 14th June, 1985 the following facts :—

- (a) *GENESES OF THE CRISES* : As per Interim Agreement of 1972 between the State Govts. of Assam and Nagaland all State Police posts were to be withdrawn from the Doyang Reserved Forest. Nagaland Govt. had withdrawn its police forces from Merapani area as part of the Doyang Reserved Forest. However, taking advantage of 1979 clash in Rengmapani area, Assam Authorities set up 7 (seven) posts of Assam Police and 3 (three) posts of CRPF in the entire Doyang Reserved Forest. Assam Police opened 1 (one) new post at Merapani and also another 1 (one) post near the Nagaland Govt. Seed Farm 5 Kms. away from Merapani. As there were frequent cases of encroachment by Nagas and Non-Nagas to the Govt. Seed Farm, Nagaland Govt. posted one platoon post of NAP at Merapani in 1979 to protect the seed farm from encroachers. In the meantime, Assam Authorities opened 1 (one) Police Station at Merapani in July 1983 (within the perimeter of the Assam Police Post). This Police Station started harassing the Naga settlers immediately after its establishment. Nagaland Govt. had protested against establishment of this Police Station repeatedly, but to no effect. However, the law and order situation was under control somehow.
- (b) On 20th April 1985, the Department of Veterinary and Animal Husbandry (Nagaland) put up a semi-permanent fencing around the Quarantine Check Gate and was proceeding with the work when the public of Merapani backed by Assam Police personnel forcibly removed the fencing materials at gun point and had taken the materials to their Police Station.

On 22nd April, 1985, the Deputy Commissioner, Wokha accompanied by some police and civil officers went to the Assam Police Station to enquire about seizure of the materials and obtaining of seizure list. During the enquiry, one Assam Police personnel fired one round from his stengun, which of course missed the Deputy Commissioner, Wokha. Since, the members of the public and Assam Police personnel at Merapani were in such agitated mood that the Nagaland district administration thought it prudent to send one platoon of Nagaland Police personnel to the Nagaland Check gate which was previously manned by seven unarmed civil police. Assam Authorities then started reinforcing their posts with more men and materials.

On 1st May 1985, the DIGs (B) of both States met at Golaghat and agreed to withdraw the forces on the following day, but the agreement could not materialise as Assam Police refused to dismantle their bunkers. In fact, Nagaland Police had already dismantled some of their bunkers for timely implementation of the agreement.

[On 26th May, 1985 Assam Govt. brought one Company of Task Force personnel and put a gate beyond Nagaland Check gate (towards Nagaland) on the Golaghat-Merapani road and opened a new Forest Check Gate manned by the said Task Force. The new gate did not allow any movement of vehicle or public, police personnel, police rations etc. belonging to Nagaland. In the meantime, the Assam Police had built up their offensive bunkers and heavy reinforcement of men and materials to their posts at the new Forest Check gate, Assam Police post at Merapani (Near Nagaland Check Gate) and also their company post near the Nagaland Seed Farm.

The new Assam Forest Check gate became such an irritant to the Nagaland Authorities that request was made to Assam Authorities at various levels to suspend or dismantle the said Check Gate but Assam Authorities refused to comply with such repeated requests. After the establishment of this check gate, the NAP could not reinforce or resupply their force at Nagaland Govt. Check Gate at Merapani and the platoon post at Seed Farm. Under the above circumstances, a platoon strength of NAP personnel with rations, supplies etc. was detailed on foot to the Seed Farm post on the afternoon of 4th June, 1985. The party before reaching the isolated Seed Farm, NAP post was fired upon by the Assam Police

post which is located near the said NAP post at about 4 P.M. on the same day (i.e., 4-6-85). It could not be ascertained how the firing spread all over the places, but it appears that since the situation was tense on both sides exchange of fire took place after hearing the firing in the Seed Farm area.]

- (c) Taking into account the development of serious situation in the Merapani sector, Nagaland Govt. initiated request to Assam Govt. that the Commissioners level meeting should take place at Dimapur on 24th May 1985; Assam Govt. replied that 27th May would be suitable to them. Nagaland Govt. agreed to Assam suggestion and conveyed the same to Assam Govt. and Govt. of India. However, the meeting was to be attended by a Central Observer who was to be deputed by the Ministry of Home Affairs. The Central Observer, Shri S.R. Arya, Joint Secretary, Ministry of Home Affairs suggested on 3rd June 1985. The Assam and Nagaland teams arrived on time, but the Central Observer could not arrive on 3rd June due to dislocation of Airflight. However, the two teams initiated discussions pertaining to the Assam-Nagaland border not relevant to Merapani sector. In the afternoon session of 3rd June, 1985, Nagaland team pointed out that the Assam Police Station established in July 1983 and the new Assam Forest Check Gate established on 26th May, 1985 should be removed as these two have become a serious irritant to the Nagaland Authorities. The Assam team refused even to discuss about these two issues. Though the position of Nagaland team became disgraceful and humiliating, the Nagaland team did not want continued confrontation of the two state forces and therefore, decided and conveyed to the Assam team that they would not insist to the dismantling of the Police Station for the present, but the new Assam Forest Check Gate should be dismantled. The Nagaland team went to the extent of suggesting that even if the Assam Authorities could not dismantle the gate the operation of the gate should at least be suspended to defuse the immediate situation in the area. The Assam team refused even to suspend the operation of the gate. Under these circumstances, no decision could be taken to defuse the situation at Merapani. The Assam team also stayed back at Chumukedima for the night of 3rd June, 1985.

On 4th June 1985, the Central Observer Shri S.R. Arya arrived and the discussions regarding Merapani situation was continued in his presence. The Nagaland team pressed for removal or even suspension of the operation of the said check gate for immediate defusion of the situation. Assam team was not prepared to remove or suspension the operation of the check gate and the discussion lingered on till 5.30 P.M. or so. Before the meeting could be concluded, the teams were informed around 5 P.M. that exchange of fire has already started in Merapani sector but no detail were known at that time. The Assam team hastily agreed for suspension of the Check gate for a period of 10 days during which they would obtain the approval of the Assam Govt. It was also decided that both sides could issue cease fire orders to their police forces. The cease fire could not be implemented as there was no agency to go in between the two parties. In the meantime, the armed conflict continued. On 6th June 1985, the two State Govts. directed that the two Commissioners and IGP should meet at Chumukedima again to defuse the situation. Accordingly, the two teams met in the same place around 1430 hours on 6th June, 1985 and started discussing ways and means to obtain an effective cease fire. The Commissioner, UAD, Jorhat still insisted that the Assam Forest Check gate should continue, and that he even declared that he was not competent to suspend or remove the said gate. However, it was ultimately agreed that the said gate should be suspended till a reference is made to the two State Chief Ministers. It was ultimately agreed to order a cease fire effective from 2000 hours on 6th June, 1985 and the two teams dispersed to their respective places for issue of necessary instructions to their respective police forces and also detail concerned DIGs(B) as an agency to carry out the cease fire. It was subsequently found that the exchange of fire has already ceased on the ground around 5 P.M. on 6th June, 1985.

- (d) *PART—(Village Guards)* :—The Village Guards were rushed to Wokha district to man the police posts and other public installation vacated by the NAP personnel in that district. They had no other operational role in the Merapani sector.
- (e) For all practical purposes the civilians of the neighbouring Naga villages had no operational role as such in the armed conflict between two State forces. However, under the prevailing circumstances, it is gathered that some local civilians assisted the Nagaland police personnel in constructing temporary shelters, movement of supply of food and cooking the foods for the NAP personnel. They also assisted in evacuating the dead and injured of the NAP personnel.

NOTE :—Information regarding (a) & (e) pertains to Police and as such the same may be obtained from the IGP, Nagaland.

Yours faithfully,

(N. JAKHALU)
Commissioner

No. CCB. 3/82 (Vol. II)
Copy to :—

Dated Kohima, the 19th June, 85

The Inspector General of Police, Nagaland, Kohima for information..

APPENDIX XIII

File No. Con/26/85 Vol. I

SECRET

IMMEDIATE

GOVERNMENT OF NAGALAND
OFFICE OF THE INSPECTOR GENERAL OF POLICE
NAGALAND, KOHIMA

No. PHQ (A-IV) 52/85 :

Dated Kohima, the 15th June '85.

To

The Home Commissioner to the
Government of Nagaland,
Kohima.

Sub :—REPORT ON MERAPANI INCIDENT

Sir,

It has a reference to your U.O. No. CON-86/85 dated 13th June, 85 under which a copy of DO letter No. GEN-60/85/122 Dated 2th June '85 from Shri G. Renga Rao, SSG, Rajbhavan, Kohima addressed to Shri I. Longkumer, Chief Secretary, Nagaland was enclosed. Necessary information in answer to the queries are furnished below :—

(a) *Genesis of the crisis* :—

Two Battalions of the Assam Police comprising of 1st & 3rd AP Bns. started mobilisation into disputed area of Merapani and opened new posts in between Merapani town of Nagaland side towards 2 KM from ILP Check Gate. The mobilisation was done under the personal command of DIG (ER) Jorhat. Thereafter they erected a new Check-gate under the cover of Forest Check Gate within the Naga inhabited area of Merapani. They started putting up numerous sign boards which read as follow :—

(i) "forest Check-Gate Jorhat District Merapani".

(ii) Carrying of Arms and Ammunitions and Explosives strictly prohibited by Order of Assam Govt.

Side by side they started building strong defences around Nagaland ILP Check-gate so also they opened Two coy Posts at the so-called Forest gate, strongly fortified, which were manned by Assam Police Task Force. The Nagaland Police was having a platoon post at Govt. Seed Farm about 5 K.M. from ILP Check-Gate and at the ILP Check-Gate the Nagaland Police had posted one platoon of NAP for the protection of Civil Police staff following the unprovoked mobilisation of Assam Police in this area.

At this so-called Assam Forest Check-Gate, the Assam Police started preventing movements of Nagaland Police with arms and rations to ILP Check-Gate and Seed Farm post and attempted to starve the personnel at these two places. On 28-5-85 at 0900 hrs. Assam Public at Merapani with the help of Assam Police set fire on the houses of S/Shri Enchamo Lotha, Kunchamo Lotha and Sisho Lotha, which were located hardly 300 metres away from the 4th NAP (E) Coy HQ permanently located at Merapani town for law and order duties. This has infuriated the Naga Public in Merapani town and a sense of insecurity among the Naga inhabitants at Merapani town was felt and to ensure their security and to create a sense of safety among them, the Coy HQ of Merapani NAP was reinforced by another platoon. In the same evening (28-5-85) at 1410 hrs. they resorted to unprovoked firing at Nagaland Police post by using 2" mortars and LMGs and rifles. In spite of this provocation, the Nagaland Police remained calm and quiet without replying to their firing. In the meantime, they started strengthening their defences by employing thousands of civilians building all around defences of their posts, building standing morchas, LMG Bunkers and barbed wire fencing around their posts. After this incident, the Assam Police continued to re-inforce all their posts in this area.

Report was received at this Hqrs. to this effect from Commandant, 4th NAP and therefore, the matter was taken up with the Govt. and arranged a DIGs (border) level meeting of both States on 30-5-85 and they arrived at an agreement that their respective Policemen at Merapani area will be confined in barracks and neutral Force (20th Bn. CRPF) will patrol the area under the command of 'B' Sector Commander, Dy. Commandant, Shri Gidda. This agreement was observed in letter and spirit from our side. However, it is unfortunate that Assam Police sent out their Police patrol party on 4-6-85 in violation of the agreement and resorted to unprovoked firing at NAP boys who were constructing temporary shelter for the personnel sent to re-inforce the post in Veliguri area. The Nagaland Police still maintained the agreement and exercised extreme restraint from resorting to firing at the Assam Police for more than half an hour. Yet, the Assam Police continued unprovoked firing against Nagaland Police and having no other alternative the Nagaland Police started firing against Assam Police in self defence. These are the events/sequences which led to the final show down.

(a) *The events that escalated the crisis*

As indicated at para (a) above.

(c) *Series of decisions taken by the Govt. of Nagaland to defuse the tension in the Merapani area.*

(i) The Chief Secretary and I.G.P. have sent number of Wireless Messages to Government of India, D.G. Assam, IGP (Border) Assam that efforts should be made to dis-engage the two confronting forces by using Neutral forces like Assam Rifles and CRPF. However, from Assam side no reply was received to these correspondences.

(ii) In the meetings on 3rd & 4th June, 85 IGP Nagaland personally insisted upon to discuss about defusing tension at Merapani and yet the Assam officials led by Commissioner, Upper Assam Division did not pay any heed to it.

However, at Govt. level other measures might have been taken, which may be obtained from Commissioner, Nagaland.

(d) *The steps that has been taken by the State Govt. to meet the situation with the details regarding number of men, firearms and ammunition of the Police force and Village Guards deployed in the Merapani area.*

(i) Once the firing started, we were compelled to deploy following forces :—

3rd NAP Bn.	— 1 Coy
4th NAP Bn—(1 Coy over and above the Coy deployed at Merapani town & Govt. seed Farm)	— 2 Coys
5th NAP	— 3 Coys
1st NAP	— 1 Coy
	<hr/>
	Total — 7 Coys

With the heavy casualties reported more re-inforcement was arranged including VGs, but reported at Merapani after the cease-fire on 7th June 1985 morning and therefore, they were immediately sent back to their respective places of posting, the account was not maintained.

(ii) *Fire arms used*

LMG	— 63
2" Mortar	— 21
Stengun	— 63
.38 Revolver	— 25
.303 Rifle	— 525

(The above account is approximate and no proper account could be maintained).

Ammunition

.303 BDR	— 1,34,320 rds.
.303 CTN	— 10,103 "
.9 MM	— 64,165 "
H.E. Bomb	— 920 Nos.
36 Hand Grenade (4 Sec.)	— 407 "
Para Illuminating	— 72 "
Para Illuminating (red)	— 6 "
.38 Ball Ammn.	— 500 Rds.
.303 Tracer	— 432 "
1" Cartridge Red	— 84 "
.303 Blank Rounds	— 200 "

(e) *Number of casualties/number of injured/fire arms and ammun utilised and the ammn and fire arms recovered from Assam/CRPF Force :*

(i) *Casualties*

Death	— 5
Missing	— 1
Injured	— 23

i) *Ammun utilised*

.303 BDR	— 1,32,320 rds.
.303 CTN	— 9,203 "
.9 MM	— 40,365 "
H.E. Bomb	— 900 Nos.
36 Hand Grenade (4 Sec.)	— 287 Nos.
Para Illuminating	— 54 "
Para Illuminating (Red)	— 6 "
.38 ball amn.	— 308 rds.
.303 Tracer	— 432 rds.
1" Cartridge	— 84 "
.303 Blank rds.	— Nil.

(iii) *Arms ammunition lost in the clashes*

.303 Rifle	—	7 Nos.
.9 MM Stengun	—	1 No.
.Bayonet	—	3 Nos.

(iv) *Arms/ammn. recovered from Assam/CRPF forces.*

The list of arms and ammunition recovered has not yet been compiled and will be submitted in a day or so.

(c) *Role of Civilians of Naga villages in the Merapant area in the incident*

The civilians had rendered their services to evacuate the injured and in supplying cooked rations.

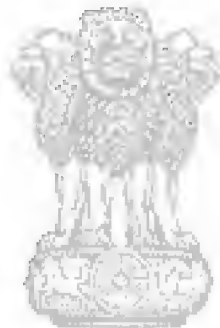
Yours faithfully,

Sd/

N. ALIBA,

Dy. Inspector General of Police,

P.H.Q., Kohima.



सत्यमेव जयते

DE NR 100/6

8260/41

8/5

NR 120

10 - D.C. WKA

W - D.C. ISG/Commr/Home Commr/CS/SPL Secy.
To C.M. KMAV_o - A.D.C. RPE

Allo Con-54/85 dt 6/60 would like to inform you that 214 (214) V.Gs. from KPE Subdivn have already been mobilised and dispatched to Isg. early this morning for redeployment in yr area. In this Conn. it will be appreciated if all Stt. pertaining to V.G. Casualties if any during the Confon. spc. fm. KPE Sector shd. be sent in Code O Reason being if V.Gs. of my Sector sustain any losses such info. once known to the public will unneely flare up to public sentiment and mos. violence against all assamese and other non locals within my sub.divn. I would think the same shd be applied to Isg. Sector. Therefore Ily send all sitrep of casualties of V.Gs. Strictly by Code msg. O This is for yr info. and neeq. action pte

200 2153/6

R/2233/6

M/Pam

21/6/85

Copy by
G. B. B. B.

APPENDIX XV

File No. Con 34(2)/85

W.T. MESSAGE

D T O

FLASH

TO SDO(C) BDI/DIG NAP CAMP M/PANI
INFO COMMR/CHIEF SECY/POLICE/SEC TO CM KMA
DC TSG
COMMDT V.G. TSG
2 DC WKA

D. CON. 34(2)(i)/85/DT 6/6/85 (:) First batch of V.Gs from Tuensang arrived Wokha today at 10.30 hrs (:) The strength of V.Gs is 255 armed and 30 un-armed men under the Command of Sri. Shokum Yim-chunger Asstt. Commdt and two JCOs (:) After having lunch at Wokha they are leaving for M/Pani at 1100 hrs (:) Regarding earlier report of arrival of VGs at Bhandari at 0525 hrs. this morning it was a mistake and it was 5th NA which has arrived at Bdi at 0525 hrs (:)

Copy to : The Police Radio, for transmission.

Sig.
Deputy Commissioner,
Wokha



OE 120

206

45-

TB = D.C. WKA

Rn - SDO (C) BDI

NO = CON - 2/85-86 Dt 6/6 @

8:00p @ PS Assam. w/Pam set fire
by nap troops at 1350 Hrs @

two @ VGS reached this loc. at

1400 Hrs @ Firing continues @ Casually
if any will intimate Report later @

1435/L

by

1443
/L
Am

APPENDIX XVII

SHASTRI COMMISSION OF INQUIRY ON INCIDENTS RELATING TO ASSAM-NAGALAND BORDER CONFLICT DURING APRIL—JUNE, 1985

ABBREVIATIONS

A/Exbt.	— Assam Exhibit
A.A.P.	— Assam Armed Police
A.P.	— Assam Police
A.P. Bn.	— Assam Police Battalion
A.D.C. (B)	— Additional Deputy Commissioner (Border).
A.S.P.	— Assistant Superintendent of Police
A.P.T.F.	— Assam Police Task Force
A/W	— Assam Witness
Bn.	— Battalion
BOP	— Border Outpost
BDI	— Bhandari
BSF	— Border Security Force
Com. Exbt.	— Commission Exhibit
CMD C/Dma	— Chumukedima
C.G.	— Check Gate
C/W	— Commission Witness
Com	— Commissioner
C.S. Chief Sec.	— Chief Secretary
Comdt.	— Commandant
Coy	— Company
DC or Dep Com.	— Deputy Commissioner
DSP	— Deputy Superintendent of Police
DIG (ER)	— Deputy Inspector General of Police (Eastern Range)
DIG(B)	— Deputy Inspector General of Police (Border)
DIG (NAP&FS)	— Deputy Inspector General of Police (Nagaland Armed Police & Fire Service)
DMP	— Dimapur
DISPUR	— Assam Government
DIG (Hqr)	— Deputy Inspector General of Police (Headquarters).
DGP	— Director General of Police.
Exbt or Ext	— Exhibit
FCG	— Forest Check Gate
FIR	— First Information Report
GLT	— Golaghat
G/Ghat	— Golaghat
GHTY	— Guwahati
ILP	— Inner Line Permit
ILP CG	— Inner Line Permit Check Gate
IGP	— Inspector General of Police
IGP (Hqr.)	— Inspector General of Police (Headquarters)
IGP (B)	— Inspector General of Police (Border)
IGPs	— Inspector General of Police
IGP (T&AP)	— Inspector General of Police (Training & Armed Police)
IPC	— Indian Penal Code
IG	— Inspector General of Police
Jht/J	— Jorhat
KMA or K/MA	— Kohima
KPE or KEP	— Kiphre (Sub-division of Nagaland)

M.	MPN or M/Pani MITHUN MHA	— Merapani — Message code for Government of Nagaland — Ministry of Home Affairs
N.	N/Land NLG N/W NAP N.P. N/Exbt or Ext. NAD	— Nagaland — Government of Nagaland — Nagaland Witness — Nagaland Armed Police — Nagaland Police — Nagaland Exhibit — Northern Assam Division
O.	OP O/C	— Outpost — Officer Commanding or Officer-in-Charge
P.	Pln PS PO Hqr.	— Platoon — Police Station — Police Headquarters
S.	SDO(C) SDPO SP Jht/(J) SP(B) 2nd Officer SMF	— Sub-Divisional Officer (Civil) — Sub-Divisional Police Officer — Superintendent of Police, Jorhat — Superintendent of Police (Border) — Second Officer — Seed Multiplication Farm of Nagaland at Velluguri
T.	TSG	— Tuensang
U.	UAD	— Upper Assam Division
V.	VCG VHG VG V/Guri VSF	— Veterinary Check Gate — Village Home Guards — Village Guards — Velluguri — Velluguri Seed Farm
W.	WKA/W	— Wokha

नमो भगवते वासुदेवाय